



Federal Communications Commission
Washington, D.C. 20554

January 20, 2026

DA 26-65
In Reply Refer to:
1800B3-CEG
January 20, 2026

Holy Mother Mary
c/o Dennis J. Kelly, Esq.
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Albert Adam David
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Re: **Holy Mother Mary**
New LPFM, Cascade, Iowa
Facility ID No. 786456
Application File No. 232660
Petition for Reconsideration

Dear Applicant and Objector:

We have before us a petition for reconsideration (Second Petition)¹ of the dismissal of the above-referenced application (Application) for a new low power FM (LPFM) station at Cascade, Iowa (Station), filed by Holy Mother Mary (HMM) on March 11, 2025.² For the reasons set forth below, we deny the Second Petition.

Background. The Application was filed on December 13, 2023, during the 2023 new LPFM filing window.³ On January 23, 2024, the Audio Division, Media Bureau (Bureau) dismissed the Application for failure to satisfy the spacing requirements with respect to a co-channel vacant allotment on Channel 254A in Asbury, Iowa.⁴ In the *First Dismissal Letter*, the Bureau stated that, pursuant to section 73.870(c) of the Commission's rules (Rules), HMM could not amend to correct this short-spacing.⁵ On February 23, 2024, HMM filed a petition for reconsideration (First Petition) accompanied by a proposal to resolve the short-spacing by moving the Station to a non-adjacent channel.⁶ In the First Petition, HMM argued that it should not be barred from filing a curative amendment because section 73.870(c) does not apply to applications that

¹ Pleading File No. 267832 (filed Mar. 11, 2025).

² See *Holy Mother Mary*, Letter Decision, 40 FCC Rcd 1260 (MB 2025) (*Second Dismissal Letter*).

³ See generally, *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).

⁴ See *Actions*, Public Notice, Report No. PN-2-240125-01 (MB Jan. 25, 2024) (*First Dismissal Letter*). Specifically, the required spacing was 67 kilometers but HMM's proposed spacing was 29 kilometers.

⁵ *Id.* (citing 47 CFR § 73.870(c) (prohibiting new LPFM applicants from amending to cure spacing defects)).

⁶ Pleading File No. 239730 (First Petition) (proposing to move from Channel 254 to non-adjacent Channel 228).

are short-spaced to vacant allotments, only short-spacing involving “applications and facilities.”⁷ On July 25, 2024, the Bureau issued the *Reconsideration Letter*, agreeing with HMM that section 73.870(c) does not apply to dismissals based on short-spacing to vacant allotments.⁸ The Bureau thus reinstated the Application and provided HMM 30 days to cure the spacing defect under the Commission’s *nunc pro tunc* amendment policy.⁹ In the *Reconsideration Letter*, the Bureau also warned HMM that, as set out in the *Guidance Public Notice*, it would not accept a curative amendment involving a prohibited major change to a non-adjacent channel.¹⁰

On August 23, 2024, HMM filed an amendment proposing a second-adjacent channel change to Channel 252. To accommodate this second-adjacent channel change, HMM requested two waivers: (1) waiver of the minimum power requirement set out in section 73.811(b);¹¹ and (2) waiver of the spacing requirement set out in section 73.807.¹² In the alternative, HMM again requested to be allowed to make a major amendment to non-adjacent Channel 228, citing to *Diocese of Portland* as precedent for an applicant being allowed to correct erroneous technical information in its application through a waiver of the prohibition on major amendments.¹³

On February 14, 2025, in the *Second Dismissal Letter*, the Bureau denied HMM’s request for waivers of the minimum power, spacing, and minor amendment rules. Regarding the minor amendment rule specifically, the Bureau rejected “HMM’s circular argument that we should waive the LPFM major change amendment prohibition because it has ‘constricted HMM’s ability to amend.’”¹⁴ It explained that, “[t]he prohibition on major amendments to pending new LPFM applications is a rule of general applicability to which all new LPFM applicants are subject.”¹⁵ The Bureau also rejected HMM’s comparison to *Diocese of Portland*, explaining that that case involved a typographical error and that the major amendment was only permitted because of an ambiguity in the then-applicable law.¹⁶ The Bureau emphasized that *Diocese of Portland* clarified that all applicants must provide accurate technical information going forward or face

⁷ First Petition at 3-4.

⁸ *Id.*

⁹ The *nunc pro tunc* policy allows applicants to file a single curative amendment accompanied by a petition for reconsideration within 30 days of dismissal. See generally, *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776 (1984), recon. denied, 57 RR 2d 1603 (1985) (as subsequently published in the Federal Register, 49 Fed. Reg. 47331 (Dec. 3, 1984)) (*Nunc Pro Tunc Public Notice*).

¹⁰ *Holy Mother Mary*, Letter Decision, 39 FCC Rcd 8433 (MB 2024) (*Reconsideration Letter*) at 2-3 (citing *Media Bureau Provides Guidance on the Processing of Schedule 318 Applications Filed in the LPFM Window*, Public Notice, 39 FCC Rcd 966, 968 (MB 2024) (*Guidance Public Notice*)).

¹¹ See 47 CFR § 73.811(b) (providing that an LPFM station “may not operate with facilities less than 50 watts ERP at 30 meters HAAT or the equivalent necessary to produce a 60 dBu contour that extends at least 4.7 kilometers”).

¹² Application, Exh. entitled “Waiver Exhibit” (Waiver Requests) at 1-2; 47 CFR § 73.807 (requiring a 100 kilometers minimum distance separation rather than the 64-kilometer distance separation HMM proposed).

¹³ Waiver Requests at 2-4 (citing *Roman Catholic Diocese of Portland, Maine*, Memorandum Opinion and Order, 29 FCC Rcd 15068, 15069, para. 2 (2014) (*Diocese of Portland*) (citing the prohibition on major amendments set out in 47 CFR § 73.3573 and allowing a new full service NCE applicant that had entered conflicting ASR numbers and site coordinates to file a major amendment resolving the discrepancy “based solely on an apparent ambiguity in the state of the decisional law in this area” and announcing that future applicants will be processed “solely on the site coordinates provided by the applicant . . . without reference to any other information submitted in the application”)).

¹⁴ *Second Dismissal Letter* at 4-5.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 5.

dismissal. For these reasons, the Bureau dismissed the Application for failure to satisfy the minimum power and spacing requirements for new LPFM stations.¹⁷

On March 11, 2025, HMM filed the Second Petition, arguing for the first time that the Commission lacks statutory authority to prohibit the filing of major amendments to pending new LPFM applications and that its refusal to accept a major amendment in this case is “a patent violation” of section 706(2)(A) of the Administrative Procedures Act, which requires courts to “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”¹⁸ HMM’s argument relies primarily on the Supreme Court’s 2024 holding in *Loper Bright Enterprises v. Raimondo*.¹⁹ In *Loper Bright*, the Supreme Court overturned the doctrine known as “*Chevron* deference,” which required federal courts to defer to an agency’s interpretation of congressional statutes that are “silent or ambiguous with respect to the specific issue” presented.²⁰ It stated that “the Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and may not defer to an agency interpretation of the law simply because a statute is ambiguous.”²¹

According to HMM, *Loper Bright* applies here because “Congress never gave the FCC a specific law to prevent the type of curative amendment we wanted to make in February 2024 when we sought leave to amend from Channel 254 to Channel 228. . . We find no authority for the Commission or the Audio Division not to grant leave for HMM to make its February 2024 amendment.”²² According to HMM, section 309(g) of the Communications Act of 1934, as amended (Act),²³ which authorizes the Commission to “adopt reasonable classifications of applications and amendments in order to effectuate the purposes of this section”²⁴ is “ambiguous” and “does not give the FCC express authority to dismiss applications such as that filed by HMM.”²⁵ Finally, HMM contends that it lacked clear notice of the major amendment restriction for new LPFM applications.²⁶ For these reasons, HMM concludes, it must be permitted to file a major amendment specifying Channel 228 in lieu of Channel 254.²⁷

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission, or relies on facts or arguments unknown to petitioner and could not have been

¹⁷ *Id.* at 1.

¹⁸ Second Petition at 4 (citing 5 U.S.C. § 706(2)(A)).

¹⁹ *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) (*Loper Bright*).

²⁰ See *Loper Bright* at 14 (quoting *Chevron, U.S.A. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984) (*Chevron*)).

²¹ *Loper Bright* at 14-18 (citing 5 U.S.C. § 551 *et seq.*).

²² Second Petition at 5.

²³ 47 U.S.C. § 309(g).

²⁴ Second Petition at 5-6.

²⁵ *Id.* at 6.

²⁶ *Id.* at 6-7.

²⁷ *Id.* at 7.

learned through the exercise of ordinary diligence prior to the last opportunity to present such facts or arguments.²⁸ HMM has not met this burden.²⁹

The rule governing LPFM channel change requests is section 73.871(c), which provides, “Only minor amendments to new and major change applications will be accepted after the close of the pertinent filing window.”³⁰ Section 73.871(c) defines minor amendments as certain site relocations, ownership changes, time-sharing agreements, and changes in general and/or legal information. It excludes all channel changes from the list of minor amendments. The Commission adopted this rule in 2001, in the *LPFM Second Report and Order*,³¹ and cited it repeatedly in the 2023 new LPFM filing window public notices, including the *Guidance Public Notice*,³² the *MX Public Notice*,³³ and the *Tentative Selectee Public Notice*³⁴ (collectively, LPFM Public Notices).

In the Second Petition, HMM does not dispute the Bureau’s waiver analysis but rather challenges the statutory authority for the LPFM minor amendment rule itself. While HMM does not mention section 73.871(c), let alone discuss the validity of its adoption in the *Second LPFM Report and Order* or its application in the LPFM Public Notices, it takes the broad position that section 309(g) does not provide a statutory basis for the prohibition on LPFM major amendments because it is “ambiguous” and “does not give the FCC express authority to dismiss applications such as that filed by HMM.”³⁵ In addition, according to HMM, “*Loper Bright* brings most of the Commission’s rules, policies and procedures into legal question” and “Congress never gave the FCC a specific law to prevent the type of curative amendment we wanted . . .”³⁶

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

²⁹ In addition, HMM does not meet the specific criteria for reconsideration *nunc pro tunc*, for two reasons. First, a channel change is not a “relatively minor curative amendment.” See *Nunc Pro Tunc Public Notice*, 49 Fed. Reg. at 47331; 47 CFR § 73.871(c). Second, the Second Petition is HMM’s second—arguably third counting the attachment to the First Petition—attempt at a curative amendment of its Application post-dismissal. See *Guidance Public Notice*, 39 FCC Rcd at 971 (“LPFM applicants whose applications are dismissed on other grounds will have *one opportunity* to file a minor curative amendment to its application and a petition for reconsideration, requesting reinstatement of the application *nunc pro tunc*.”) (emphasis added); *Nunc Pro Tunc Public Notice*, 49 Fed. Reg. at 47331 (“[I]f the same application is returned or dismissed a second time, it will not be afforded *nunc pro tunc* reconsideration rights.”)). While we have concerns that HMM’s reliance on *Loper Bright*—with scant connection to the specific rule at issue—could be viewed as an attempt to circumvent the *nunc pro tunc* policy’s prohibition on a second opportunity to file a minor curative amendment, we narrowly conclude that its arguments warrant consideration as relying on “events that have occurred or circumstances which have changed” under 1.106(b)(2)(i).

³⁰ 47 CFR § 73.871(c).

³¹ *Creation of a Low Power Radio Service*, Second Report and Order, 16 FCC Rcd 8026, 8028, paras. 5-7 (2001) (*LPFM Second Report and Order*). In the *LPFM Second Report and Order*, the Commission stated that the “minor amendment rule is a rule of procedure to which notice and comment requirements are inapplicable.” *LPFM Second Report and Order*, 16 FCC Rcd at 8031 (citing 5 U.S.C. § 553(b)(3)(A) and *JEM B’casting v. FCC*, 22 F.3d 320 (D.C. Cir. 1994)).

³² *Guidance Public Notice*, 39 FCC Rcd at 969.

³³ *Commission Identifies Groups of Mutually Exclusive Applications Submitted in the December 2023 LPFM Filing Window – Opens Window to Accept Settlements and Technical Amendments*, Public Notice, 39 FCC Rcd 2355, 2358 (MB 2024) (*MX Public Notice*).

³⁴ *Commission Identifies Tentative Selectees in 93 Groups of Mutually Exclusive Applications Submitted in the December 2023 LPFM Window*, Public Notice, 39 FCC Rcd 12006, 12016, n.76 (2024) (*Tentative Selectee Public Notice*).

³⁵ Second Petition at 6.

³⁶ *Id.* at 5.

HMM's section 309(g) argument is untimely and unfounded. The statutory deadline for challenging the statutory basis of section 73.871(c), which was adopted in 2001, passed decades ago.³⁷ Therefore, this argument is procedurally inadmissible as a basis for reconsideration. Furthermore, the LPFM minor amendment rule falls squarely within the Commission's fundamental authority to make rules governing the assignment of radio frequencies. The Communications Act of 1934 tasks the Commission with regulating "all the channels of radio transmission" and "provid[ing] for the use of such channels . . . under licenses granted by Federal authority . . ."³⁸ Section 309 of the Act sets forth the procedural framework for obtaining such licenses.³⁹ It sets forth the crucial distinction between major and minor applications and amendments and exempts minor applications and amendments from, e.g., the statutory 30-day public notice and waiting period requirement.⁴⁰ Section 309(g) authorizes the Commission to "adopt reasonable classifications of applications and amendments in order to effectuate the purposes of this section."⁴¹ The Commission has adopted multiple rules under section 309(g), classifying major and minor applications and amendments in various services.⁴² Defining a channel change as a major amendment to a pending new LPFM application is one such reasonable classification.

When it adopted section 73.871(c), the Commission explained the purpose of the LPFM minor change classification: "Providing an opportunity to amend to different channels after the close of a window

³⁷ 47 U.S.C. § 405 ("A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of.").

³⁸ 47 U.S.C. § 301. *See also, e.g., Northstar Wireless, LLC v. FCC*, 38 F.4th 190 (D.C. Cir. 2022) ("Because transmissions can interfere with one another when they are broadcast in the same portions of spectrum, the Commission awards licenses to operate in specific frequency ranges, or 'bands.'") (internal quotations and citations omitted). As a procedural rule relating to the assignment of broadcast frequencies, section 73.871(c) also falls squarely within the Commission's fundamental mandate to ensure a "fair, efficient, and equitable" distribution of radio service nationwide. *See* 47 U.S.C. § 309(c)(1). Other core mandates that are implicated in this case are 47 U.S.C. § 154(i) ("The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions") and 47 U.S.C. §§ 303(c) (authorizing the Commission to assign frequencies for each individual station) and (r) (authorizing the Commission generally to "make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter . . .").

³⁹ 47 U.S.C. § 309. *See also*, 47 U.S.C. § 308 (b) ("All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require.").

⁴⁰ *See* 47 U.S.C. §§ 309(b), (c).

⁴¹ 47 U.S.C. § 309(g)); *see, e.g., Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System*, Report and Order, 18 FCC Rcd 5162, 5168, para. 23 (2003) ("The Commission is authorized to adopt rules classifying amendments as either major or minor") (citing 47 U.S.C. § 309(g)).

⁴² *See, e.g.,* 47 CFR §§ 73.3573(a) and 73.3522 (classifying and establishing procedures for major and minor amendments to pending applications in the FM service); 47 CFR § 78.109 (classifying and establishing procedures for major and minor change applications in the cable television relay service); 47 CFR § 74.1233 (classifying major and minor change applications in the FM translator service); 47 CFR §§ 1.929, 1.947 (classifying and establishing procedures for major and minor filings in the wireless services); 47 CFR § 73.3522 (47 CFR § 73.3572 (classifying and establishing procedures for major and minor amendments to pending TV station applications). Notably, the Act does not require that the Commission apply uniform processing rules to all radio services. The Commission retains the discretion to develop and apply processing policies tailored to the unique characteristics of each service, particularly for processing applications submitted during filing windows. *See Clifford Brown Jazz Foundation*, Memorandum Opinion and Order, 29 FCC Rcd 13258, 13259 (2014) (citing 47 U.S.C. §§ 154(i) and (j)).

would make staff determinations of mutual exclusivity and the administration of the selection procedure for mutually exclusive applications inherently subject to duplicative reevaluations.”⁴³ We affirm this reasoning and will not require Bureau processing staff to reevaluate the Application using a new non-adjacent channel, which would entail not only repeating the technical review regarding, e.g., spacing compliance, but also a fresh determination of whether the amended Application would be part of a new, existing, or already-resolved MX group. Such a duplicative reevaluation would be the precise harm the Commission sought to avoid when it adopted section 73.871(c).

Nor are we persuaded that *Loper Bright* constitutes changed circumstances warranting reconsideration under section 1.106(b)(2) of the Rules. In *Loper Bright*, the Supreme Court did not eliminate or change the LPFM minor amendment rule, which remains in full force and effect. Therefore, *Loper Bright* does not provide a basis for reconsidering the Bureau’s action in applying section 73.871(c) and dismissing the Application. It is necessary and well established that an agency must follow its own rules.⁴⁴ When processing the Application, Bureau staff was obliged to either apply the LPFM minor amendment rule or waive it. The Bureau analyzed HMM’s waiver request under the waiver standard set out in section 1.3 of the Rules and *WAIT Radio*.⁴⁵ Under this standard, waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.⁴⁶ Because the Bureau found that HMM had not shown special circumstances warranting waiver of the prohibition on major amendments to pending new LPFM applications, it properly dismissed the Application for failure to satisfy the relevant minimum power and spacing requirements.

Finally, HMM’s contention that it lacked notice of the LPFM minor amendment rule is unavailing. All applicants have a duty to know and comply with the Commission’s rules, case law, statutes, and any other sources of applicable law.⁴⁷ Section 73.871(c) has been published in the Commission’s Rules since 2001. HMM had ample opportunities to submit a rule-compliant application, including the opportunity to specify a new channel at any point during the new LPFM filing window.⁴⁸ Its failure to do so does not warrant the relief requested in the Second Petition.

Conclusion. For the reasons stated above, IT IS ORDERED that the petition for reconsideration filed by Holy Mother Mary on March 11, 2025 (Pleading File No. 267832), IS DENIED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁴³ *LPFM Second Report and Order*, 16 FCC Rcd at 8028, para. 6.

⁴⁴ See, e.g., *Alegria I, Inc. v. FCC*, 905 F.2d 471, 474 (D.C. Cir. 1990) (citing *Reuters Ltd. v. FCC*, 781 F.2d 946, 950-51 (D.C. Cir. 1986)).

⁴⁵ See 47 CFR § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, para. 2 (D.C. Cir. 1969).

⁴⁶ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)).

⁴⁷ See, e.g., *Adrian Abramovitch, Marketing Strategy Leaders, Inc. and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4674, para. 32, n.79 (2018); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 (2015); *Southern California B’casting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 para 3. (1991).

⁴⁸ See 47 CFR § 73.871(a) (“New and major change applications may be amended without limitation during the pertinent filing window.”).