

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
HOPE RADIO OF ROLLA, INC.	)	File No. BNPL-20010122AKZ
	)	Facility ID No. 132462
Application for a New Low Power FM Station at	)	
Rolla, Missouri	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 13, 2013**

**Released: May 14, 2013**

By the Commission: Commissioner McDowell not participating.

1. The Commission has before it an Application for Review (“AFR”) filed by Hope Radio of Rolla, Inc. (“HRR”), applicant for a new low power FM (“LPFM”) broadcast station in Rolla, Missouri.<sup>1</sup> HRR seeks review of the March 12, 2007, decision of the Chief, Audio Division, Media Bureau (“Bureau”), which denied HRR’s Petition for Reconsideration of the Bureau’s dismissal of its application.<sup>2</sup>

2. Upon review of the AFR and the entire record, we conclude that HRR has failed to demonstrate that the Bureau erred. The Bureau dismissed the Application because LPFM is a noncommercial educational (“NCE”) service, and to be eligible to hold such an authorization, an LPFM applicant must be a public agency or non-profit private foundation, corporation, or association that is recognized by the laws of the state in which it proposes to operate at the time it submits its application.<sup>3</sup> The record in this case establishes that HRR, which represented in its original Application that it was a “non-stock, not-for-profit corporation organized under the laws of the state of Missouri in January 2001,”<sup>4</sup> was not incorporated as of January 22, 2001, the date its President so certified and filed the Application. In fact, HRR did not validly incorporate in Missouri until February 15, 2001. The Bureau noted in the *Staff Decision* that an LPFM applicant’s corporate existence at the time of filing is crucial because of the above-noted statutory eligibility requirements for non-profit LPFM licensees.<sup>5</sup>

3. On review, HRR challenges this finding, citing one case in which the Commission granted an application for consent to assignment of a non-reserved band NCE FM station despite the fact that the non-profit assignor had not continuously maintained its corporate existence.<sup>6</sup> *FRI*, however, involved an assignment from the allegedly non-compliant non-profit corporation to an individual who then operated the station commercially. Thus, the party whose non-profit status was in question, which

<sup>1</sup> File No. BNPL-20010122AKZ (“Application”).

<sup>2</sup> *Hope Radio of Rolla, Inc., and National Lawyers Guild Center on Democratic Communications*, Letter, 22 FCC Rcd 4822 (MB 2007) (“*Staff Decision*”).

<sup>3</sup> 47 U.S.C. § 397(6)(A). See also 47 C.F.R. §§ 73.503(a), 73.801; *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2215 (2000) (“*LPFM R&O*”); *Public Radio of Camp Dennison*, Memorandum Opinion and Order, 23 FCC Rcd 2481, 2485 (2008); and *Sonido Internacional Cristiano, Inc.*, Memorandum Opinion and Order, 23 FCC 2444, 2449 (2008) (“*Sonido*”).

<sup>4</sup> Application, Exhibit 2.

<sup>5</sup> *Staff Decision* at 2-3. See 47 U.S.C. § 397(6)(A).

<sup>6</sup> *Fatima Response, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 18543, 18544 (1999) (“*FRI*”).

had been validly incorporated but purportedly was subsequently dissolved by the State of Oregon for failing to pay annual filing fees, sought Commission approval to relinquish control of the station. Where, as here, the issue is whether to award an LPFM authorization to HRR, which can only qualify for an LPFM authorization by being a valid non-profit educational organization,<sup>7</sup> the question of HRR's adherence to organizational formalities in its formation is of paramount importance.<sup>8</sup> We therefore find *FRI* to be inapposite, and affirm the Bureau's holding that an LPFM applicant's status as a valid non-profit organization at the time it files its application is fundamental to our determination of the applicant's qualifications to hold an LPFM authorization.<sup>9</sup>

4. For the first time on review, HRR purports to cite Missouri law pertaining to unincorporated non-profit associations, now claiming that its pre-incorporation planning activities and intentions satisfied the requirements of that law.<sup>10</sup> Because HRR did not make this argument in its Petition for Reconsideration, the Bureau was not afforded an opportunity to pass on those arguments and facts and thus we need not consider them here.<sup>11</sup> Even were we to consider the substance of the argument, as an alternative and independent basis for our decision here, we find it without merit. HRR's *post hoc* attempt to recast itself as an unincorporated association prior to its belated incorporation consists solely of its citation of three Missouri statutes that contain the words "unincorporated association" without setting forth the law pertaining to the creation of such an entity or a demonstration that HRR complied with those requirements as of the date it filed its Application.<sup>12</sup> The Bureau properly decided the matters raised, and we uphold its decision for the reasons stated in the *Staff Decision*.

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,<sup>13</sup> and Section 1.115(g) of the Commission's rules,<sup>14</sup> the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>7</sup> 47 C.F.R. § 73.853(a); 47 U.S.C. § 397(6)(A).

<sup>8</sup> Unlike a non-reserved band FM station, an LPFM station must operate as an NCE station, and thus an LPFM licensee must maintain NCE eligibility at all times. *LPFM R&O*, 15 FCC Rcd at 2213 and n.33.

<sup>9</sup> *Accord Sonido*, 23 FCC Rcd at 2449.

<sup>10</sup> AFR at 2, 5-6. Over two years after it filed its Petition for Reconsideration of the Bureau's dismissal of its Application, and over five years after filing the Application, HRR purported to amend its Application to state for the first time that it "first operated as an unincorporated association . . . [that] was organized and began planning and preparing its application" in November 2000. Application (amended July 24, 2006), Exhibit 2.

<sup>11</sup> 47 C.F.R. § 1.115(c). *See supra* note 10.

<sup>12</sup> Mo. Ann. Stat. §§ 355.066(14), 482.310(1), 527.130.

<sup>13</sup> 47 U.S.C. § 155(c)(5).

<sup>14</sup> 47 C.F.R. § 1.115(g).