

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

In the Matter of)
Cocoa Minority Educational Media Association)
Application for a New LPFM Station at) File No. BNPL-20131114BST
Cocoa, Florida) Facility ID No. 197241

MEMORANDUM OPINION AND ORDER

Adopted: December 16, 2015

Released: December 16, 2015

By the Commission:

1. The Commission has before it an Application for Review ("AFR") filed by Cocoa Minority Educational Media Association ("CMEMA") on March 21, 2015. CMEMA seeks review of a Media Bureau ("Bureau") decision¹ that affirmed the dismissal of CMEMA's application for a construction permit for new LPFM station at Cocoa, Florida ("Application").²

2. Upon review of the AFR and the entire record, we conclude that CMEMA has failed to demonstrate that the Bureau erred in dismissing the Application. The issue at hand is not whether Florida recognizes unincorporated associations, but whether CMEMA is recognized as an unincorporated association under the laws of any jurisdiction. CMEMA - which, according to its Application, appears to consist solely of one member, Johnny Boone - has not provided documentation showing that it is an eligible non-profit entity rather than an alter ego for Mr. Boone.³ FCC Form 318 states: "If the applicant is unincorporated, the [eligibility] exhibit must include the state in which it is registered or otherwise recognized and the date of such registration or recognition."⁴ CMEMA provided no such information. Although the Bylaws submitted by CMEMA reference a headquarters location in Cocoa, Florida,⁵ CMEMA bases its claim to non-profit status on one provision of Florida law involving foreign associations (i.e., associations established under the laws of a jurisdiction other than Florida) and another requiring unincorporated associations transacting business in Florida to make clear, in its name or otherwise, that it is not incorporated.⁶ Accordingly, if, by citing the former statute, CMEMA is claiming to be a non-Florida unincorporated association, it never provided the information required by FCC Form

1 Cocoa Minority Educational Media Association, Letter, Ref. 1800B3-ATS (MB Mar. 12, 2014) ("Reconsideration Decision") (denying Petition for Reconsideration filed by CMEMA ("Petition")); Letter, Ref. 1800B3 (MB Feb. 9, 2015) ("Dismissal Letter").

2 On March 13, 2015, Greater Blessed Assurance Apostolic Temple, Inc. ("GBAAT"), electronically filed a pleading as an "Informal Objection" but which is styled "Plaintiff's Petition to Deny Defendant's Request to Reconsider." We will consider this as an untimely opposition to the Petition and dismiss it as moot, together with the Informal Objection filed by GBAAT on February 2, 2015 ("First Objection"), discussed below.

3 The Application and Bylaws only identify one party to the application, Johnny Boone, who is listed as CMEMA's "President/CEO." Application at Section II, Question 3.a. and Att. 2. In the AFR, CMEMA states that its "by-laws clearly reveals that the petitioner [sic] not merely an alter-ago [sic] of its current president" and that its "by-laws clearly provides for the appointment of members." AFR at 12-13.

4 Note to Section II, Question 2.

5 Application, Att. 2.

6 See AFR at 1 and 6-8 (citing and quoting Fla. Stat. Ann. Chs. 622.02, 622.06).

318 as to the jurisdiction in which CMEMA was registered or otherwise recognized as an unincorporated association. If it claims to be a domestic Florida unincorporated association, it has failed to cite the Florida statute recognizing such organizations or that it was so established as of the filing of its Application. The Instructions to FCC Form 318 clearly state that an application that fails to provide the required documentation of the applicant's status as a non-profit entity will be dismissed.⁷ We find that the Application was properly dismissed for failure to provide the required information.⁸

3. As a separate and independent basis for affirming the Bureau's dismissal of the Application, we also affirm the finding in the *Reconsideration Decision* that the Application should be dismissed because – assuming CMEMA does consist of persons other than Boone – CMEMA has never disclosed the identity of any such persons or provided information required by FCC Form 318 concerning their qualifications to hold an interest in the requested authorization.⁹ Although the Bylaws claim that CMEMA has five officer positions (Chairman, President, Vice President, Secretary and Treasurer) and three or four board members, the Application discloses only Boone, as CMEMA's President and CEO.¹⁰ In addition, the Application represents that Boone has 0% voting power in CMEMA, which means the Application completely lacks information as to who allegedly controls CMEMA.¹¹ We find no error in the Bureau's analysis.¹² Any officers and board members other than Boone – if they do exist – were not disclosed in the Application,¹³ the Bylaws, or the AFR. In addition, the failure to identify in the Application who has voting power in CMEMA, as called for by Section II, Question 3(a)(4), is another fatal deficiency.¹⁴

4. Finally, the AFR raises a new argument for the first time on review.¹⁵ Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(c) of the Commission's Rules bar applications for review that rely “on questions of fact or law upon which the [designated authority issuing

⁷ Instructions to FCC Form 318, Section II, Question 2(a).

⁸ See, e.g., *Wynnewood Cmty. Radio Ass'n*, Memorandum Opinion and Order, 29 FCC Rcd 6309 (2014) (affirming dismissal of noncommercial educational station construction permit application where applicant failed to demonstrate that it satisfied requirements of unincorporated associations under Oklahoma law and applicant consisted of only one person); *Fondren Cmty. Voices*, Letter, 30 FCC Rcd 3003, 3004-5 (MB 2015) (citation to statute without explanation of how organization complies with requirements of unincorporated association insufficient to demonstrate applicant was recognized as such an entity); *M&M Cmty. Dev., Inc.*, Letter, 21 FCC Rcd 7983, 7984 (MB 2006) (listing documents that could support an applicant's claim to being an unincorporated association).

⁹ *Reconsideration Decision* at 2-3.

¹⁰ Application at Section II, Question 3.a. and Att. 2.

¹¹ *Id.* at Section II, Question 3.a.

¹² As noted in the *Reconsideration Decision*, any attempt to amend the Application at this stage to identify any undisclosed board members would constitute an impermissible major change in ownership. See *Reconsideration Decision* at 3 n.18; see also 47 C.F.R. § 73.871(c)(3).

¹³ See Application, Section II, Question 3(a).

¹⁴ See 47 C.F.R. § 73.3566(a); Instructions to FCC Form 318 at 2 (Defective Applications): “Applicants should provide all information required by this application.... Defective or incomplete applications will be returned without consideration.”

¹⁵ AFR at 2 (arguing that the First Objection was a prohibited *ex parte* presentation because it was not served on GBAAT and should have been dismissed).

the decision] has been afforded no opportunity to pass.”¹⁶ CMEMA did not present this argument to the Bureau in the Petition and we will dismiss this part of the AFR pursuant to Section 1.115(c).¹⁷

5. ACCORDINGLY, IT IS ORDERED that the Application for Review filed by Cocoa Minority Educational Media Association on March 21, 2015, (1) IS DISMISSED, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(c) of the Commission’s Rules, to the extent that it relies on questions of fact or law not previously presented to the Bureau; and (2) otherwise IS DENIED, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(g) of the Commission’s Rules.¹⁸

6. IT IS FURTHER ORDERED that the informal objections filed by Greater Blessed Assurance Apostolic Temple, Inc. on February 2, 2015 and March 13, 2015 ARE DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁶ See 47 U.S.C. § 155(c)(5); 47 C.F.R. § 1.115(c); *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1184 (D.C. Cir. 2003) (upholding Commission’s order dismissing arguments under Section 1.115(c) because that rule does not allow the Commission to grant an application for review if it relies upon arguments that were not presented below).

¹⁷ Were we to consider this argument, we would conclude that CMEMA was not prejudiced by GBAAT’s failure to serve CMEMA and, therefore, that this violation does not warrant a different outcome in this case. The First Objection was electronically filed and thus available to CMEMA through the Commission’s website, and, in light of CMEMA’s discussion of the substance of that filing both in its Petition and in its AFR, it appears to have otherwise obtained and reviewed it. Although 47 C.F.R. § 1.1216 provides that we may impose sanctions for *ex parte* violations, not every deviation from these rules warrants being treated as a serious violation worthy of sanctions. See, e.g., *Ex parte Complaint of Marcus Spectrum Solutions, LLC*, Memorandum Opinion and Order, 23 FCC Rcd 2351 (2011). We caution GBAAT that electronically filed pleadings must still be served on all parties to the proceeding. See 47 C.F.R. § 1.47. Finally, in our review of the record, we determined that the Commission’s CDBS records erroneously listed the First Objection as “granted” even though neither the *Dismissal Letter* nor the *Reconsideration Decision* referenced the First Objection or purported to address the argument presented therein. Accordingly, to correct the record we dismiss the First Objection as moot.

¹⁸ 47 U.S.C. § 155(c)(5); 47 C.F.R. § 1.115(g).