

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

In the Matter of
Selma Weather and Information Forum
Application for a Construction Permit for a New LPFM Station at Selma, Alabama
Application File No. 0000231868
Facility ID No. 787789

MEMORANDUM OPINION AND ORDER

Adopted: April 25, 2026

Released: April 28, 2026

By the Commission:

I. INTRODUCTION

1. By this Memorandum Opinion and Order, the Commission considers an Application for Review (AFR) that challenges the dismissal by the Media Bureau (Bureau) of the challenger’s application for a new low power FM (LPFM) construction permit filed in the 2023 LPFM filing window. The Bureau dismissed the application of Selma Weather and Information Forum (Selma), for a new LPFM station at Selma, Alabama (Application), for violating the localism requirements in section 73.853(b) of the Commission’s rules (Rules) because its application identified a transmitting antenna site 560 miles east of the coast of North Carolina. Under section 73.871(c) of the Rules, Selma was not permitted to file a curative major amendment. Selma requests reinstatement of its application, claiming the public interest would be served by allowing applicants to correct clerical errors, particularly for a noncommercial service such as LPFM. For the reasons set forth below, we affirm the dismissal of the Application and dismiss in part and otherwise deny the Application for Review.

II. BACKGROUND

2. Sections 73.853(b) and 73.871(c). An LPFM applicant must qualify as a “local” entity at the time that it files its FCC Form 2100, Schedule 318 application (LPFM Application). To qualify as

1 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).

2 Application File No. 0000231868 (filed Dec. 7, 2023).

3 See 47 CFR § 73.853(b).

4 See id. § 73.871(c)(1) (stating that only minor amendments will be accepted after the close of the pertinent filing window). Pursuant to section 73.871(c)(1), minor amendments for LPFM applicants are limited to site relocations of 11.2 km (6.9 miles) or less. Id.

5 See 47 CFR § 73.853(b); Instructions for LPFM Application, Legal Certifications Section, Eligibility Certifications and Community-Based Criteria Certifications questions. See also LPFM Application, Legal Certifications Section, (continued....)

local, a public safety radio service applicant, such as Selma,⁶ must have jurisdiction within the service area of the proposed LPFM station.⁷ The Bureau verifies localism certifications based on the antenna location coordinates specified in the “Antenna Location Data” section of the application.⁸ While LPFM applicants are permitted to amend applications pursuant to section 73.871 of the Rules, section 73.871(c)(1) provides that only minor amendments will be accepted after the close of the pertinent filing window and that minor amendments for site relocations involving LPFM applications are limited to no more than 11.2 kilometers (6.9 miles).⁹

3. *Technical and Legal Acceptability – Tech Box.* In 2014, the Commission in *Diocese of Portland* announced a “clear policy” explaining how it would resolve inconsistencies in the specification of antenna sites in radio station applications.¹⁰ The Commission acknowledged that there had been “apparent ambiguity” in the law in this area but stated that going forward the Bureau staff should rely *only* on the technical parameters specified within the discrete data fields contained in the technical portion of a radio station application (previously referred to as the “Tech Box,” now referred to as “Technical Sections”) when determining technical acceptability, and making legal evaluations, without resort to any other data submitted elsewhere in the application or attachments.¹¹ The Commission stated¹² that this policy would cover applications filed under FCC Form 318, which covers LPFM applications.¹³

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Eligibility Certifications questions; *Procedures Public Notice*, 38 FCC Rcd at 6662 and 6665, n.27 (informing LPFM applicants that each applicant must be local, as defined by the Rules, and certify the same).

⁶ See Application at Legal Certifications Section, Eligibility Certifications questions (certifying that Selma is a “state or local government or non-government entity that proposes a noncommercial public safety radio service to protect the safety of life, health or property”).

⁷ See 47 CFR § 73.853(b)(3) (In the case of any applicant proposing a public safety radio service, to be deemed local, the applicant must certify that it has jurisdiction within the service area of the proposed LPFM station). While Selma claimed eligibility to hold an LPFM authorization as a state and local government or non-government entity that will provide noncommercial public safety radio services under section 73.853(a)(2), in the Application Selma also certified that it satisfied the localism requirement for nonprofit educational organization applicants because (1) it is physically headquartered or has a campus within 20 miles, for applicants outside of the top 50 urban markets, of the transmitting antenna site proposed in its application, and (2) 75% of its board members reside within 20 miles of the transmitting antenna site. See *id.* § 73.853(b)(1)-(2); Application at Legal Certifications Section, Community Based Criteria questions.

⁸ To qualify as local, a public safety applicant must propose a public safety radio service and have jurisdiction within the service area of the proposed station. See 47 CFR § 73.853(b)(3); *Procedures Public Notice*, 38 FCC Rcd at 6665, n.27. (emphasis added).

⁹ See 47 CFR § 73.871(c)(1).

¹⁰ See *Roman Catholic Diocese of Portland*, Memorandum Opinion and Order, 29 FCC Rcd 15068, 15069, para. 2 (2014) (*Diocese of Portland*).

¹¹ See *Diocese of Portland*, 29 FCC Rcd at 15069, 15072, paras. 2, 8 (directing staff to “make any technical and legal evaluations of, and take any actions regarding, such applications based upon the stated antenna location coordinates specified in the Tech Box, without resort to any other data in the Tech Box or elsewhere in the application or attachments. Such staff actions may include, but are not limited to, dismissal of such defective applications and refusal to accept amendments where such amendments would conflict with accurate and rule-compliant window-filed applications.”). The Commission explicitly applied this guidance to equivalents to the Tech Box in future forms. *Id.* at 15072, para. 8.

¹² See *id.* at 15062, para. 2.

¹³ Since *Diocese of Portland*, the Bureau has transitioned from the Consolidated Database System (CDBS) to the Licensing and Management System (LMS). In CDBS, the engineering portion of the form included a marked portion titled “Tech Box,” which contained specific engineering questions pertinent to the radio service applied for and critical technical data required for engineering review. LMS applications use a different layout and no longer

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Moreover, in the *Procedures Public Notice* issued shortly before the 2023 LPFM filing window, the Bureau reminded LPFM applicants of the Commission's policy and cautioned them to "carefully review the channel and antenna location coordinates, and all data specified" in the Technical Sections and "to ensure the information is accurate and contains no typographical errors."¹⁴ The Bureau indicated it "will not review attachments or information specified elsewhere in the application to resolve discrepancies caused by typographical or other applicant error."¹⁵

4. *Section 73.853(b) Dismissal and Petition for Reconsideration.* The Application specified coordinates for a transmitting antenna site located in the Atlantic Ocean near Bermuda, approximately 560 miles east of the coast of North Carolina.¹⁶ The Bureau dismissed the Application because it failed to meet the localism requirements of section 73.853(b).¹⁷ While minor amendments are at times permitted after the close of a filing window,¹⁸ the Bureau explained that any amendment to correct the site would not be a minor amendment, which are limited to site relocations of 11.2 kilometers, or 6.9 miles, or less.¹⁹ Selma filed a Petition for Reconsideration.²⁰ Selma requested reinstatement of the Application in order to change its proposed transmitting antenna site coordinates listed in the application Technical Sections. Selma acknowledged that the Application Technical Sections listed inaccurate coordinates due to a typographical error,²¹ but argued that (1) the coordinate error was a "clerical error" on the part of its consultant;²² (2) the Application indicates the intended location of the antenna in other sections or attachments to the Application;²³ and (3) in the 2013 LPFM filing window, although the Bureau dismissed similar LPFM applications that contained typographical errors regarding minimum spacing requirements

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include a subsection explicitly labeled as the "Tech Box." Instead, technical information in the LMS LPFM construction permit application, FCC Form 2100, Schedule 318, is found in the Channel and Facility Information section and the Antenna Location Data section, or "Technical Sections." Thus, the Channel and Facility Information section and the Antenna Location Data section of the FCC Form 2100, Schedule 318, Low Power FM Station Construction Permit Application are the updated LMS version of the "Tech Box." For the purposes of this Order, we refer to them as the "Technical Sections."

¹⁴ *Procedures Public Notice*, 38 FCC Rcd at 6667 (citing *Diocese of Portland*).

¹⁵ *Diocese of Portland*, 29 FCC Rcd at 15072, para. 8 (the Commission directed staff to make technical and legal evaluations of applications based on the antenna location coordinates specified in the Tech Box, rather than using data specified elsewhere in the application or attachments).

¹⁶ Application at Technical Sections, Antenna Location Data (specifying coordinates of 32° 23' 38.1" N, 067° 00' 52.6" W).

¹⁷ See *Actions*, Public Notice, Report No. PN-2-240123-01 (MB Jan. 23, 2024) (Dismissal Public Notice) and Application at Attach. "231868 dismiss.pdf". Although the *Dismissal Public Notice* correctly held that Selma failed to satisfy the localism requirements for the LPFM service set forth in section 73.853(b) of the Rules, it cited specifically to sub-paragraphs 73.853(b)(1) and (2). Because Selma certified that it is a public safety radio service applicant, the *Dismissal Public Notice* should have cited to sub-paragraph 73.853(b)(3) of the Rule.

¹⁸ See 47 CFR § 73.871(c)(1). See also *Procedures Public Notice*, 38 FCC Rcd at 6671 (discussing opportunity for a "minor curative amendment" that "must propose minor changes").

¹⁹ We note that the *Dismissal Public Notice* incorrectly cited to section 73.870(a), which concerns minor changes (modifications) to existing authorized LPFM stations. The *Dismissal Public Notice* should have cited to section 73.871(c), which concerns amendments to pending applications for new LPFM facilities, such as the Application. 47 CFR § 73.871(c).

²⁰ Pleading File No. 0000237930 (filed Feb. 1, 2024) (Petition).

²¹ Petition at 1, 4, and 6.

²² *Id.* at 1.

²³ *Id.* at 2-3.

set forth at section 73.807, the applicants corrected those errors, and the Bureau reinstated the applications.²⁴

5. *Bureau Reconsideration Decision.* The Bureau denied the Petition, upholding its dismissal of the Application and conclusion that the Application, based on the transmitting antenna coordinates specified within the Application Technical Sections, failed to meet the localism requirements of section 73.853(b).²⁵ The Bureau also reiterated that, consistent with the Commission’s established processing rules for LPFM applications, dismissed LPFM applicants are prohibited from filing major amendments to correct violations of section 73.853(b).²⁶ The Bureau held that typographical error claims, including those of its technical consultant, cannot be used to justify filing an otherwise prohibited amendment.²⁷ The Bureau also found that Selma’s reliance on reinstated applications from 2013 was misplaced.²⁸ Specifically, the Bureau explained that the 2013 reinstated applications predated *Diocese of Portland*, a 2014 Order where the Commission clarified that, going forward, it would rely solely on Technical Sections data to determine technical and legal acceptability and prohibit applicants from curing a location deficiency in an application with a prohibited amendment.²⁹

6. *Application for Review.* Selma filed an Application for Review (AFR)³⁰ in which Selma argues that: (1) as previously raised in the Petition, applicants should be able to amend errors that are clerical in nature and not substantive;³¹ (2) the Bureau’s dismissal of the Application without opportunity to amend was inconsistent with Commission precedent and thus arbitrary, capricious, and contrary to law in violation of the Administrative Procedure Act;³² (3) there is “good cause” to reinstate the Application because increasing processing flexibility for noncommercial applicants is in the public interest, and the FCC’s reliance on processing efficiency is unpersuasive due to vast decreases in the number of new applications, efficiencies from new technologies, and inefficiencies caused by the processing of numerous

²⁴ *Id.* at 7 (citing three 2013 LPFM applications filed by: Pike Place Market Preservation and Developmental Authority (File No. BNPL-20131114AUD), Chiloquin Vision in Progress (File No. BNPL-20131112ABV), and Radio 23 (File No. BNPL-20131114AVO)).

²⁵ *Selma Weather and Information Forum*, Letter Order, 39 FCC Rcd 4155, 4156-57 (MB 2024) (*Reconsideration Decision*) (explaining that Selma “provided coordinates for its proposed antenna site that would position it in the Atlantic Ocean off the coast of Bermuda, hundreds of miles removed from the United States and notably separated from its ‘jurisdiction’ and desired service area of Selma, Alabama.”).

²⁶ *Reconsideration Decision*, 39 FCC Rcd at 4157 (citing 47 CFR § 73.871(c)(1)). *See also Procedures Public Notice*, 38 FCC Rcd at 6671 (discussing opportunity for a “minor curative amendment” that “must propose minor changes”).

²⁷ *Reconsideration Decision*, 39 FCC Rcd at 4157, citing Roy E. Henderson, Memorandum Opinion and Order, 33 FCC Rcd 3385, 3387-88, para. 6 (2018) (rejecting argument that licensee’s engineer was to blame for station’s unauthorized operations); *Whidbey Island Ctr. for the Arts*, Forfeiture Order, 25 FCC Rcd 8204, 8205, para. 6 and n.12 (MB 2010) (“the Commission has long held that ‘licensees are responsible for the acts and omissions of their employees and independent contractors’”); *Vista Services Corporation*, Forfeiture Order, 15 FCC Rcd 20646, 20650 para. 9, n.24 (2000) (“[e]mployers are routinely held liable for breach of statutory duties, even where the failings are those of an independent contractor”); *Robert J. and Katherine Bohn*, Forfeiture Order, 26 FCC Rcd 1188, 1190, para. 8 (MB 2011) (rejecting argument that lack of familiarity with filing system warranted reduction in proposed forfeiture)).

²⁸ *Reconsideration Decision*, 39 FCC Rcd at 4157.

²⁹ *Id.*

³⁰ AFR, Pleading File No. 0000245489 (filed May 30, 2024).

³¹ *Id.* at 15-16.

³² *Id.* at 5.

petitions for reconsideration and applications for review;³³ (4) as reflected by the requirement in section 73.870(c) that LPFM applications will be dismissed without opportunity to amend if they fail to meet minimum distance separations, the FCC treats LPFM applicants more harshly than other broadcast services³⁴ and (5) as previously raised in the Petition, prior applications that violated section 73.807 have been reinstated.³⁵ Selma also asserts that *Diocese of Portland* is not applicable to its Application because: (1) contrary to the Bureau's interpretation, *Diocese of Portland* does not apply to singleton³⁶ applications; it only applies in the mutually exclusive comparative consideration context, whereas in the LPFM context, Technical Sections coordinates do not grant an LPFM applicant a comparative advantage;³⁷ (2) applicants for new noncommercial educational (NCE) FM stations have made Technical Section amendments after *Diocese of Portland*;³⁸ (3) *Diocese of Portland* does not apply to typographical errors concerning channel changes, only to those concerning antenna location, and *Diocese of Portland* should not apply to the entire Technical Sections;³⁹ and (4) the "defer to the Tech Box" approach was only "codified" for commercial stations.⁴⁰ Finally, Selma argues, for the first time, that (1) unsophisticated LPFM applicants should not be expected to submit error-free applications when the FCC's own LPFM Channel Finder was down or malfunctioning prior to the closing window;⁴¹ and (2) LPFM applicants lack the funds to hire experts to file applications and subsequent petitions for reconsideration and applications for review.⁴²

III. DISCUSSION

7. An application for review of a final action taken on delegated authority will be granted when, *inter alia*, such action: conflicts with statute, regulation, precedent or established Commission policy; involves a question of law or policy which has not previously been resolved by the Commission;

³³ *Id.* at 17-18, 29, and 32.

³⁴ *Id.* at 16 and 26.

³⁵ *Id.* at 11-13 and 19. To support this argument, the AFR cited three other 2013 LPFM applications: Little Lake Grange (File No. BNPL-20131114ADG), Florida Educational Broadcasting, Inc. (File No. BMJPL-20131023AKY), and University of Washington Bothell (File No. BNPL-20131114BFU), in addition to the three 2013 LPFM applications previously cited in the Petition. See *supra* note 24. We refer to all six of these reinstated 2013 LPFM applications collectively as the *2013 Reinstated Applications*. We note that Selma's arguments regarding section 73.807 minimum distance spacing violations, and the section 73.870(c) prohibition on amendments to correct such spacing violations, are essentially identical to those raised in three applications for review, which the Commission recently addressed. See *University of Wisconsin-Milwaukee, Application for a Construction Permit for a New LPFM Station at Milwaukee, Wisconsin, et al.*, Memorandum Opinion and Order, FCC 25-58, (Sept. 12, 2025) (*Omnibus Order*). As explained further below, these arguments are not relevant to this particular Application, which was dismissed for a section 73.853 localism defect.

³⁶ A singleton application is one that is not mutually exclusive with any other application.

³⁷ AFR at 19-24.

³⁸ *Id.* at 21-22, referencing Application File Nos. BNPED-20100226AJU and 0000166836, as well as an application for Pierce, California. However, Selma failed to provide a file number for the referenced Pierce, California, application.

³⁹ *Id.* at 24-26.

⁴⁰ *Id.* at 26 (citing *1998 Biennial Regulatory Review - Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, 23082, para. 57 (1998) (*1998 Streamlining R&O*) ("[i]n the event of any discrepancies between data in the 'Tech Box' and data submitted elsewhere in the application, the data in the 'Tech Box' will be used."), *recon. granted in part*, Memorandum Opinion and Order, 14 FCC Rcd 17525 (1999)).

⁴¹ AFR at 27-28.

⁴² *Id.* at 29.

involves application of a precedent or policy that should be overturned; or makes an erroneous finding as to an important or material factual question.⁴³ As set forth below, we find that Selma has failed to demonstrate the Bureau erred, and thus we affirm the dismissal of the Application for the reasons stated in the *Reconsideration Decision*, and reject the remaining arguments in the AFR.

8. *Procedural Matters.* A number of Selma's arguments are procedurally defective because they should have been previously presented to the Bureau as required by section 5(c)(5) of the Communications Act⁴⁴ and section 1.115(c) of the Commission Rules, which provides that "[n]o application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass."⁴⁵ Selma contends, for the first time that: the Commission's reliance on processing efficiency is unpersuasive;⁴⁶ applicants should not be expected to file error-free applications when the FCC's Channel Finder was malfunctioning; and LPFM applicants lack resources to hire professional assistance.⁴⁷ We dismiss the AFR as procedurally defective to the extent it relies on new arguments that were not previously presented to the Bureau.⁴⁸ As an alternative and independent ground for resolving these issues, we deny them on the merits. Selma also raises numerous new arguments regarding minimum distance separation requirements under sections 73.807(a) and 73.870(c), which not only should have been previously presented to the Bureau, but are also inapplicable to the dismissal of this Application, which was based on violation of the localism requirement in section 73.853(b) and the prohibition of a major amendment to cure such a violation.⁴⁹ We thus dismiss Selma's arguments regarding sections 73.807(a) and 73.870(c) on procedural grounds and deny them on the merits as inapplicable.⁵⁰ The AFR also raises the following matters that the *Reconsideration Decision* already addressed and rejected: (1) clerical, non-substantive errors should be amendable, and (2) the Bureau has previously reinstated 2013 applications with similar errors.⁵¹ We affirm the Bureau's decisions on these points for the reasons discussed below.

9. *Diocese of Portland.* We uphold the Bureau's finding that section 73.853 localism certifications are verified based on the antenna location coordinates specified in the "Technical Sections" part of the FCC Form 2100, Schedule 318, Low Power FM Station Construction Permit Application (specifically, the "Antenna Location Data" field), and that applicants cannot cure a violation of the localism requirement in section 73.853(b) with a major amendment. Because Selma would need to relocate its transmitting antenna coordinates more than 11.2 kilometers, its amendment would constitute a major amendment,⁵² which is prohibited by section 73.871(c). In *Diocese of Portland*, the Commission announced a new policy, requiring that antenna location coordinates specified in FCC radio applications "be set forth accurately."⁵³ The Commission directed that Bureau staff rely *only* on the technical

⁴³ 47 CFR § 1.115(b)(2).

⁴⁴ See 47 U.S.C. § 155(c)(5).

⁴⁵ See 47 CFR § 1.115(c).

⁴⁶ AFR at 17-18, 29, and 32.

⁴⁷ *Id.* at 27-29.

⁴⁸ See 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(c); Punjabi American Media, LLC, Memorandum Opinion and Order, 35 FCC Rcd 6869, 6871, para. 7 (2020).

⁴⁹ See *supra* para. 6.

⁵⁰ As noted, Selma's argument appears to be essentially identical to the arguments raised in three similar applications for review, which the Commission recently denied in part and dismissed in part. See Omnibus Order.

⁵¹ *Reconsideration Decision*, 39 FCC Rcd at 4157.

⁵² 47 CFR § 73.871(c)(1).

⁵³ *Diocese of Portland*, 29 FCC Rcd at 15072, para. 8.

parameters specified within the Technical Sections of a radio station application when determining technical acceptability and making legal evaluations.⁵⁴ We reject Selma's argument that *Diocese of Portland* applies only to mutually exclusive applications, or to applications where a comparative advantage can be gained or lost. While the *Diocese of Portland* decision concerned applications for new NCE FM stations, the Commission did not limit its decision to only NCE FM applicants or mutually exclusive applicants. Rather, the Commission stated that its decision applied to future radio station applications. Specifically, the Commission noted that its decision was based "on an apparent ambiguity in the state of the decisional law in this area . . . [and] announce[d] a clear policy with regard to inconsistencies in the specification of antenna sites for applicants in future radio station applications, under which staff will review an FCC Form 301, 318 [LPFM construction permit application], or 340 application based *solely* on the site coordinates provided by the applicant in response to the specific application question calling for them, without reference to any other information submitted in the application."⁵⁵ Selma's argument ignores the Commission's explicit application of its holding in *Diocese of Portland* to the LPFM service.⁵⁶ While Selma asserts that *Diocese of Portland* applies only to antenna location data, and not channel selection errors, Selma's application involved inconsistent antenna location data, which was the same technical data at issue in *Diocese of Portland*. Accordingly, this argument is inapt.⁵⁷

10. *2013 Reinstated Applications.* We affirm the Bureau's finding in the *Reconsideration Decision* that the staff's reinstatement in 2013 of certain applications after the applicants corrected technical parameters is irrelevant to the 2023 LPFM filing window. As an initial matter, we note that these staff actions are not binding on the Commission.⁵⁸ In addition, mere reinstatement of an application without an accompanying explanation of the basis for the decision has no precedential value.⁵⁹ In any event, Selma also overlooks the fact that all the *2013 Reinstated Applications* cases predated *Diocese of Portland*, where the Commission clarified that it would, *going forward*, rely *solely* on Technical Sections

⁵⁴ See *Diocese of Portland*, supra note 10.

⁵⁵ *Id.* at 15069, para. 2 (emphasis added).

⁵⁶ *Id.* at 15069 and 15072, paras. 2 and 8 (clarifying that "we will require henceforth, for radio station applications, that the antenna location coordinates specified in Item 3 of the FCC Form 340 Tech Box, in Item 2 of the FCC Form 318 Tech Box, and in the Tech Boxes of FCC Form 301, or their equivalents in future form revisions, be set forth accurately."). We also reject Selma's claims that the processing policy announced in the *1998 Streamlining R&O*, which concluded that staff resources should not be consumed by guesswork when applications contain conflicting information or errors, applies only to commercial station applications. AFR at 10. While the Commission commenced its streamlining initiative by first reorganizing the commercial broadcast construction permit application (then-FCC Form 301), in *Diocese of Portland*, the Commission, explicitly referencing the *1998 Streamlining R&O*, clearly held that Bureau staff should look only at the Tech Box antenna data for all radio station applications, including LPFM applications. See *Diocese of Portland*, 29 FCC Rcd at 15071, para. 7.

⁵⁷ In any event, the Commission has affirmed that antenna location data and channel selection data are treated the same under *Diocese of Portland*. *Omnibus Order*, at 7, para. 10.

⁵⁸ See *Comcast Corp. v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008) (affirming the "'well-established view that an agency is not bound by the actions of its staff if the agency has not endorsed those actions'" (internal citations omitted)).

⁵⁹ *65 Applications for Authority to Construct and Operate Multipoint Distribution Service Stations at Three Transmitter Sites*, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 11162, 11175, para. 41 (1995) ("unexplained staff actions are not precedent to be followed"); *United States Cellular Operating Co. Compliance with Section 22.942 of the Commission's Rules in the Rockford, IL MSA*, Order, 15 FCC Rcd 4372, 4378, para. 10 (2000) (grant of application by Public Notice without explanation did not serve as precedent).

data to determine technical acceptability and make legal evaluations.⁶⁰ Further, the Commission declared that the new policy announced in *Diocese of Portland* would overrule any previous, inconsistent precedent.⁶¹ Since *Diocese of Portland*, the Commission has consistently adhered to this practice.⁶²

11. We also reject Selma's assertion that applicants for new NCE FM stations that have been allowed to amend Technical Section errors post-*Diocese of Portland* has any bearing here.⁶³ Again, as with the reinstatement of the pre-*Diocese of Portland* LPFM applications noted above, such staff actions are not binding on the Commission⁶⁴ and, in addition, staff action without an accompanying explanation of the basis for the decision has no precedential value.⁶⁵ In any event, unlike the LPFM Application here, NCE FM applications are not subject to the section 73.853(b) localism requirement. Because LPFM applications are subject to different eligibility requirements, and restrictions on amendments, these staff actions pertaining to NCE FM applications are distinguishable and inapposite. We further reject Applicant's argument that LPFM applicants are treated differently than other broadcast applicants, in violation of the APA, and note that many LPFM rules differ from those in other broadcast services, and that even for other secondary services, such as FM translators, the relevant statutory framework does not require identical licensing procedures.⁶⁶ Accordingly, we find that the Bureau acted consistently with the Commission's rules⁶⁷ and precedent and that the dismissal was not arbitrary, capricious, or contrary to law in violation of the Administrative Procedure Act (APA).

12. *LPFM Channel Finder*. We reject Selma's argument that LPFM applicants should not be required to submit accurate data if the Commission's technology, the LPFM Channel Finder, cannot be relied upon to find available channels.⁶⁸ The Application was *not* dismissed for a channel selection error, and thus this argument has no bearing on whether the Bureau properly dismissed Selma's application.⁶⁹

⁶⁰ See *Diocese of Portland*, 29 FCC Rcd at 15072, para. 8; see also *Christian Charities*, 30 FCC Rcd at 10552, para. 10, n.26 (citing *Diocese of Portland and People of Progress*, Memorandum Opinion and Order, 29 FCC Rcd 15065 (2014) (*People of Progress*)).

⁶¹ *Diocese of Portland*, 29 FCC Rcd at 15072, para. 8 ("To the extent that our application processing policy as clarified herein conflicts with that followed in previous cases, we hereby overrule that precedent.").

⁶² See *Omnibus Order*. See also *Renew Taylorsville*, Letter Order, 39 FCC Rcd 2971 (MB 2024) and *Tahoma Preservation*, Letter Order, 39 FCC Rcd 3970 (MB 2024).

⁶³ See AFR at 21-22 citing Application File Nos. BNPED-20100226AJU (new NCE FM application amendment filed before *Diocese of Portland* in 2010), and 0000166836 (new NCE FM application filed for nunc pro tunc reinstatement, which Bureau granted in accordance with NCE FM precedent).

⁶⁴ See *supra* note 58.

⁶⁵ See *supra* note 59.

⁶⁶ See, e.g., *Foundation for a Beautiful Life, Inc.*, Memorandum Opinion and Order, 36 FCC Rcd 15933, 15945-46, paras. 16-17 (2021); *People of Progress*, 29 FCC Rcd at 15066, para. 3 (stating that Section 307(b) of the Communications Act does not mandate uniform processing rules for all radio services); see also *Creation of a Low Power Radio Service*, Report and Order, 27 FCC Rcd 15402, 15426, n.139 (2012) (finding nothing in the statute or its legislative history suggests that Congress intended the provision that FM translators and LPFM stations remain 'equal in status' to require the Commission to adopt identical rules for the two services"); *MCRALDIA*, Letter Order, DA-24-1262 (MB Dec. 17, 2024); Application File Nos. BNPED-20100226AJU (new NCE FM application amendment filed before *Diocese of Portland* in 2010), and 0000166836 (new NCE FM application filed for nunc pro tunc reinstatement, which Bureau granted in accordance with NCE FM precedent).

⁶⁷ 47 CFR § 73.871(c)(1).

⁶⁸ See AFR at 27-29.

⁶⁹ We also note that the Bureau clearly cautioned that "the LPFM Channel Finder tool is intended solely to assist LPFM applicants in tentatively identifying available FM channels. There is no guarantee that channels represented as 'available' will be technically acceptable at the time an application is filed." *Procedures Public Notice*, 38 FCC

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Moreover, we nevertheless emphasize that *applicants* are responsible for submitting accurate application information, sign a certification attesting to accurate submission, and are ultimately responsible for complying with the Rules, whether or not they are represented by counsel.⁷⁰

13. *Sections 73.807(a) and 73.870(c)*. Selma also presents a number of arguments regarding section 73.807(a) spacing violations and the section 73.870(c) prohibition on curative amendments for LPFM applicants that fail to meet the minimum distance separation requirements of section 73.807. Selma contends that its Application is similar to other applications that were dismissed under sections 73.807(a) and 73.870(c) because the Bureau misinterpreted *Diocese of Portland*, unfairly denied applicants an opportunity to correct clerical errors, improperly relied on an efficiency rationale, and failed to consider applications that had been reinstated in 2013.⁷¹ However, as reflected above, the Commission upheld the Bureau's dismissals and rejected those arguments in the *Omnibus Order*.⁷² Moreover, Selma's Application was dismissed for its violation of the localism requirement under section 73.853(b), *not* for a spacing violation under section 73.807(a) and was prohibited from filing a major amendment to the Application under section 73.871(c),⁷³ *not* section 73.870(c). To the extent that the applications in the *Omnibus Order* involved rules that did not apply to Selma's applications, we reject Selma's arguments.

14. Selma also asserts that the Commission's reliance on processing speed and efficiency is now unpersuasive due to decreases in the number of new applications, efficiencies from new technologies, and inefficiencies caused by the processing of numerous petitions for reconsideration and applications for review.⁷⁴ We disagree. Over 1,000 applications were filed during the 2023 LPFM Window, and the Bureau has granted over 800 applications. Efficiency in initial application processing of more than a thousand applications is paramount, and requiring staff to spend additional time to resolve inconsistencies in such applications resulting from errors made by applicants is not a good use of the Commission's limited resources.⁷⁵

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that the Application for Review filed by Selma Weather and Information Forum on May 30, 2024, (Pleading File No. 0000245489) IS DISMISSED in part, pursuant to section 1.115(c) of the Commission's rules, and otherwise IS DENIED, pursuant to section

(Continued from previous page) _____

Rcd at 6663. See also <https://www.fcc.gov/media/radio/lpfm-channel-finder>. Selma acknowledged that it read this disclaimer. AFR at 28.

⁷⁰ See *Salzer v. FCC*, 778 F.2d 869, 875 n.27 (D.C. Cir. 1985) (stating that in evaluating an application, FCC need not consider whether counsel assisted in the preparation of such application); *Burlington Cablevision, Inc.*, Order on Reconsideration, 13 FCC Rcd 772, 779, para. 18 (MB 1998) (finding that regardless of whether petitioner was represented by counsel, petitioner "was solely responsible for ensuring compliance with the Commission's rules.").

⁷¹ See AFR at 14-29.

⁷² Selma specifically identifies the applications of University of Wisconsin-Milwaukee, All Music Portland, Creative Community Hub & Exchange, and City of Erie Cable TV Access Corp. In the *Omnibus Order*, the Commission affirmed the dismissals as to three of the four applicants, University of Wisconsin-Milwaukee, All Music Portland, and Creative Community Hub & Exchange. See *Omnibus Order*. Erie did not file an application for review of its dismissal.

⁷³ 47 CFR § 73.871(c).

⁷⁴ AFR at 17-18, 29, and 32.

⁷⁵ See *Omnibus Order*.

5(c)(5) of the Communications Act of 1934, as amended,⁷⁶ and section 1.115(g) of the Commission's Rules.⁷⁷

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁷⁶ 47 U.S.C. § 155(c)(5).

⁷⁷ 47 CFR § 1.115(c) and (g).