



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

August 19, 2014

*In Reply Refer To:*  
1800B3-PPD

Mr. Maurice Vargas  
P.O. Box 215  
Kings Park, NY 11754

Peter Tannenwald, Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17<sup>th</sup> Street  
11<sup>th</sup> Floor  
Arlington, VA 22209

Mr. William Tucker  
422 Marietta Place, N.W.  
Washington, DC 20011

**In Re: Application for Construction Permit  
for a Low Power FM Broadcast  
Station**

New-LP, Washington, DC  
Facility ID Number: 195472  
Sincere Seven  
File Number: BNPL-20131114AYL

**Informal Objection and  
Petition to Deny**

Dear Messrs. Vargas, Tannenwald, and Tucker:

We have before us (1) Sincere Seven's ("S7") application for a new low power FM broadcast ("LPFM") station at Washington, D.C. ("LPFM Application"); (2) SEDC Communications Corporation's ("SEDC") March 31, 2014, Informal Objection ("Objection") to the LPFM Application; (3) Radio One Licenses, LLC ("Radio One") April 3, 2014, Petition to Deny ("Petition") the LPFM Application; (4) S7's April 16, 2014, Opposition to Petition to Deny ("Opposition"); and (5) Radio One's April 28, 2014 ("Reply").<sup>1</sup> For the reasons set forth below, we deny the Objection and the Petition and grant the LPFM Application.

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<sup>1</sup> On April 30, 2014, Radio One filed a Petition for Leave to File Supplement to Reply and a Supplement to Reply ("Supplement") to address an exhibit that was not served by mail. We will grant the motion and accept the Supplement.

**Background.** S7 timely filed the LPFM Application on November 14, 2013, prior to close of the LPFM window on November 15, 2013.<sup>2</sup> The LPFM Application was accepted for filing as a singleton on February 27, 2014.<sup>3</sup>

### *SEDC Objection*

The LPFM Application noted that “the proposed LPFM antenna site satisfies required distance separation requirements to all FM facilities except second-adjacent [station] WQSR, Baltimore, MD.”<sup>4</sup> Therefore S7 sought a waiver of the second-adjacent separation requirement for WQSR.<sup>5</sup> However, SEDC claims that S7’s proposed operation will create a ground level interference zone to station WQSR within 278 meters in radius from the tower encompassing many occupied structures.<sup>6</sup>

### *Radio One Petition*

As evidence of its nonprofit status, the LPFM Application included (1) S7’s articles of incorporation, notarized on September 18, 2013 (“Articles”); (2) an October 4, 2013, “Notice of Business Tax Registration” from the Government of the District of Columbia (“Registration”); (3) the cover of a September 24, 2007, notice (“Notice”) from the U.S. Department of Treasury, Internal Revenue Service (“IRS”); (4) a portion of an August 1, 2001, 501(c)(3) tax exempt letter from the IRS (“Tax Letter”); and (5) a portion of an April 13, 2013, status update letter from the IRS regarding S7’s tax exemption application (“Status Letter”).<sup>7</sup>

Radio One alleges S7 was not an eligible nonprofit corporation at the time S7 filed its LPFM Application.<sup>8</sup> Although S7 included its Articles in the LPFM Application, Radio One states there is no evidence the Articles “were ever filed with D.C. authorities.”<sup>9</sup> Additionally, Radio One states that the Registration only reflects the process to register for a business tax account and does not establish corporate existence.<sup>10</sup> Radio One also claims S7 is an ineligible nonprofit organization because S7’s tax exempt status was revoked as of May 2010.<sup>11</sup> Radio One further notes that the 2001 Tax Letter relates to an organization also by the name of “Sincere Seven,” based in Tennessee (“TNS7”), however, TNS7 was dissolved in 2005.<sup>12</sup> Finally, Radio One notes that all the IRS correspondence refers to the same Taxpayer Identification Number (“TIN”), which was originally used by TNS7 and is now being used by S7, concluding that S7’s D.C. tax account “was not established on behalf of a new D.C. corporation.”<sup>13</sup>

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<sup>2</sup> See *Media Bureau Extends Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 15763 (2013).

<sup>3</sup> Public Notice regarding the acceptance of S7’s application was given on March 4, 2014. See *Broadcast Applications*, Public Notice, Report No. 28188 (March 4, 2014).

<sup>4</sup> LPFM Application (S7 noted also that the proposed site did not satisfy the separation requirements for second-adjacent station WTOP-FM, Washington, D.C.).

<sup>5</sup> *Id.* at Exhibit 11A (S7 also sought a second-adjacent waiver for WTOP-FM).

<sup>6</sup> Objection at 3.

<sup>7</sup> LPFM Application at Attachment 2.

<sup>8</sup> Petition at 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 2-3.

<sup>11</sup> *Id.* at 3, Exhibit 3.

<sup>12</sup> *Id.* at 3, Exhibit 2.

<sup>13</sup> *Id.* at 3.

Radio One also alleges that S7 has not obtained reasonable assurance of site availability.<sup>14</sup> The LPFM Application lists ASRN 1227148 (the “Tower”), which was registered by American Towers, LLC (“AT”), as the location for the proposed LPFM station’s antenna. Radio One provides an email from Kent Keglovitz of AT stating that AT had not received any correspondence from S7 regarding the Tower.<sup>15</sup>

S7 admits it is not legally organized in Tennessee and is not claiming to be a Tennessee corporation.<sup>16</sup> Rather, S7 states it moved its physical headquarters from Knoxville, Tennessee to Washington, D.C. in 2006, and from 2006 to October 2013, S7 existed in Washington as an unincorporated association pursuant to the District of Columbia’s Uniform Unincorporated Nonprofit Association Act of 2010.<sup>17</sup> S7 states that its “directors and officers agreed to operate from 2006 forward as an ad hoc association” after moving its headquarters from Knoxville to Washington.<sup>18</sup> S7 also provides a list of activities and work it has performed in Washington, prior to the filing of the LPFM Application.<sup>19</sup>

Additionally, S7 states that the September 2007 Notice, listing the TIN and D.C. address and the October 2013 Registration is evidence of its existence in D.C. and that it is a legal entity in D.C.<sup>20</sup> It further states that the IRS’s Notice, Tax Letter, and Status Letter all refer to S7 by its only TIN and are proof of S7’s nonprofit status.<sup>21</sup> S7 notes that the “dissolved” TIN “is simply the one-time assignment of the Employer Identification Number [“EIN”] of the incorporated entity that moved its headquarters from one state to another. The dissolution is a natural transaction on the re-location process....It is also the identical EIN registered with the District of Columbia....”<sup>22</sup>

As further evidence of its recognized nonprofit status, S7’s Opposition includes an online confirmation that S7 submitted its paperwork for a “Basic Business License” on September 19, 2013, and an online confirmation that S7 submitted its Articles on October 21, 2013 with the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”).<sup>23</sup> S7 disputes Radio One’s allegation that the Articles were not submitted to the D.C. authorities and provides the “Work Order ID” that was “received” by DCRA on October 21, 2013, as confirmation that its Articles were filed.<sup>24</sup>

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<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.* at 4, Exhibit 4.

<sup>16</sup> Opposition at 3-4.

<sup>17</sup> *Id.* at 2. *See also*, D.C. Code § 29-1102, which states that an “‘Unincorporated nonprofit association’ means an unincorporated organization, consisting of 2 or more members joined under an agreement that is oral, in a record, or implied from conduct, for one or more common, nonprofit purposes.”

<sup>18</sup> Opposition at 2. *See also*, Opposition, Affidavit of Perry Redd, stating that Mr. Redd has served as S7’s Executive Director in a volunteer capacity since 1999 and reports to S7’s Board of Directors, and Affidavit of Gary C. Ayers, stating Mr. Ayers served as a board member from 2011-2012.

<sup>19</sup> *See id.*, Affidavit of Perry Redd, Affidavit of Gary C. Ayers, and Letter from Perry Redd, Executive Director (“Redd Letter”).

<sup>20</sup> *Id.* at 1-2.

<sup>21</sup> *Id.* at 4.

<sup>22</sup> *Id.*, Redd Letter.

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.*, Redd Letter. S7 agrees with Radio One that a search of “DC’s ‘verify a business’ query tool nets no results, [but] that in and of itself is not the sole tool for verification.” *Id.*

S7 states also that it obtained reasonable site assurance. S7 provides a letter from Daniel Poirer, Manager, Lead Generation for AT, dated October 4, 2013 (“Tower Letter”), as evidence that it had obtained site assurance prior to the filing of the LPFM Application. The Tower Letter states that S7 has “permission to represent in any applications filed with the [FCC] that the company has reasonable assurance from American Tower that it will enter into good faith lease negotiations for tower and transmission equipment space on the [Tower]. Final consideration shall be contingent upon submitting a completed site application, receiving credit approval from American Tower and conducting a full structural analysis and shared interference study.”<sup>25</sup>

It its Reply, Radio One again asserts that S7’s application uses the EIN of the dissolved Tennessee entity, thus the real applicant no longer exists.<sup>26</sup> Radio One also states that the IRS documents are not proof of S7’s unincorporated nonprofit status and the “Basic Business License” application “appears to be only an application, with no indication that the license was ever issued.”<sup>27</sup> Radio One further states that S7’s receipt of its filing of the Articles is not evidence of incorporation, but rather a Certificate of Good Standing would be conclusive evidence.<sup>28</sup> Radio One also states that the DCRA website and calls to DCRA do not have records of S7’s incorporation.<sup>29</sup> Moreover, Radio One argues that S7 has not established that it qualifies as an unincorporated association.<sup>30</sup>

Finally, Radio One states that the Tower Letter did not provide site assurance because the letter did not indicate space was available, stated that studies would be required, and stated that rent would be determined after a credit check.<sup>31</sup> Radio One also takes issue with the fact that the letter came from a “‘Manager, Lead Generation,’ whose job apparently is to find customers, not to make tower deals.”<sup>32</sup> According to Radio One “all American Tower has said is that if [S7] is granted a construction permit and makes application to American Tower, American Tower will look and see if space is available and will negotiate if...a future investigation of specifics has a positive outcome.”<sup>33</sup>

**Discussion.** Pursuant to Section 309(d) of the Act, both informal objections and petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.<sup>34</sup> Neither SEDC nor Radio One has met this burden.

Section 47 C.F.R. 807(e) (1) of the Commission’s rules (“Rules”) allows LPFM applicants seeking a second-adjacent channel waiver to “use an undesired/desired signal strength ratio methodology

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<sup>25</sup> *Id.*, Tower Letter.

<sup>26</sup> Reply at 2.

<sup>27</sup> *Id.* at 3.

<sup>28</sup> Supplement at 1.

<sup>29</sup> *Id.* at 2.

<sup>30</sup> Reply at 2.

<sup>31</sup> *Id.* at 3.

<sup>32</sup> *Id.* at 3-4.

<sup>33</sup> *Id.* at 4.

<sup>34</sup> 47 U.S.C. § 309(d); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987).

to define areas of potential interference.”<sup>35</sup> Although SEDC’s Objection uses an undesired/desired signal strength ratio methodology, SEDC fails to account for the proposed antenna’s vertical attenuation factor. When using the proposed antenna parameters, the interference zone does not reach the ground level and remains at least 30 meters above the ground level within the 278 meter radius from the tower. SEDC does not indicate that there are any structures within the 278 meter radius from the tower that exceed 30 meters in height.<sup>36</sup>

Next, according to the Rules, a LPFM station may be licensed to a nonprofit educational organization for the advancement of an educational program.<sup>37</sup> The establishment of LPFM as a noncommercial service requires that licensees comply with the eligibility requirements of Section 397(6) of the Communications Act of 1934, as amended (the “Act”).<sup>38</sup> Section 397(6) of the Act defines a “noncommercial educational broadcast station” as a station which “(A) . . . is owned and operated by a public agency or nonprofit private foundation, corporation, or association. . . .”<sup>39</sup> Thus, a LPFM applicant must be incorporated, registered, or otherwise organized as a nonprofit entity under state law at the time it files its application.<sup>40</sup> If the applicant is formed in a jurisdiction, such as D.C., that recognizes unincorporated nonprofit associations, the Commission has accepted showings of valid organizational status from an association, such as evidence that it took steps to register with the Secretary of State’s office or an opinion of a qualified attorney that the applicant is an unincorporated association in that jurisdiction.<sup>41</sup>

Notwithstanding Radio One’s attempts to suggest that the use of the same EIN by TNS7 and S7 is evidence that S7 does not exist as a separate entity, we find that S7 has sufficiently demonstrated its existence as a separate legal entity in D.C. as of November 14, 2013, the date it filed its LPFM Application. S7 submitted copies of its Articles, effectuated on September 18, 2013, evidencing its nonprofit, educational purpose. S7 also provided evidence that on October 21, 2013, it requested that the organization be registered with DCRA, and DCRA received this request.<sup>42</sup>

FCC Form 318 does not specifically ask the applicant to identify its type of organization. In this case, the application is confusing because S7 attached “Articles of Incorporation” for “Sincere Seven, Inc.” and those Articles identify the organization as a “corporation.”<sup>43</sup> Those Articles were executed on September 18, 2013, approximately two months before the LPFM Application was filed. At some point before filing the application, S7 apparently decided to apply as an unincorporated nonprofit association.

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<sup>35</sup> 47 C.F.R. § 807(e)(1).

<sup>36</sup> We note that if S7 constructs its facility and causes interference to WQSR, it would be required to resolve the interference or cease operation. See 47 C.F.R. Section 73.807(e)(2).

<sup>37</sup> 47 C.F.R. § 73.853(a). See also *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2213 (2000) (“*LPFM Report and Order*”) (“having decided to establish LPFM as a noncommercial service, we will require that LPFM licensees comply with the eligibility requirements of [47 U.S.C. § 397(6)(A)].”).

<sup>38</sup> *LPFM Report and Order*, 15 FCC Rcd at 2215.

<sup>39</sup> 47 U.S.C. § 397(6).

<sup>40</sup> See *LPFM Report and Order*, 15 FCC Rcd 2205 at 2215. See also 47 U.S.C. § 397(6)(A).

<sup>41</sup> See *Wynnewood Community Radio Association*, Letter, 29 FCC Rcd 107, 109-110 (MB 2014), *rev. denied*, FCC 1472 (rel. June 5, 2014).

<sup>42</sup> See *Hammock Environmental And Educational Community Services*, Letter, 25 FCC Rcd 12804, 12807 (MB 2010) (finding that the applicant was eligible to hold a noncommercial educational license because the applicant had submitted copies of its Articles of Association & Bylaws, evidencing its educational purpose, and a date-stamped copy of a letter to the Florida Secretary of State’s Office requesting that the association be registered with the state).

<sup>43</sup> LPFM Application, Attachment 2.

Under D.C. law, the Articles constitute the “governing principles” of such an association.<sup>44</sup> Although it would have been helpful for S7 to clarify its organizational status in the LPFM Application, it did complete the Form 318 correctly and the attachments to the LPFM Application sufficiently establish S7 as an unincorporated nonprofit association under D.C. law.<sup>45</sup>

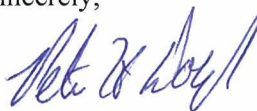
According to D.C. Code § 29-1102, and unincorporated nonprofit association is “an unincorporated organization, consisting of two or more members joined under an agreement that is oral, in a record, or implied from conduct, for one or more common, nonprofit purposes.” S7 has stated that its board agreed to operate as an “ad hoc association” after its move to D.C. in 2006.<sup>46</sup> In addition to its Articles, S7 provides affidavits from the Executive Director and a former board member outlining their volunteer work with S7, as well as a list of S7’s activities in D.C. between 2011 and 2013.<sup>47</sup> Accordingly, we find that S7 was eligible to file the LPFM Application.

Finally, it is well established that the specification of a transmitter site in an application is an implied representation that the applicant has obtained reasonable assurance that the site will be available for the construction and operation of its proposed facilities.<sup>48</sup> While some latitude is afforded such “reasonable assurance,” there must be, at a minimum, a “meeting of the minds resulting in some firm understanding as to the site’s availability.”<sup>49</sup>

We find that S7 has sufficiently demonstrated that it obtained reasonable site assurance. The Tower Letter specifically states that S7 has reasonable assurance that AT will enter into good faith lease negotiations for tower and transmission equipment space. This clearly suggests that the Tower is available for the construction and operation of S7’s proposed LPFM station.

**Conclusion.** Accordingly, IT IS ORDERED that the Objection and Petition ARE DENIED. Furthermore, application BNPL-20131114AYL IS GRANTED. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>44</sup> D.C. Code § 29-1102(2).

<sup>45</sup> In particular, we find that S7’s registration as a nonprofit entity with the DCRA satisfies our standard for documentation of an organization as an unincorporated nonprofit association. *See Wynnewood, supra*, and *Hammock, supra*.

<sup>46</sup> Opposition at 2.

<sup>47</sup> *See id.*, Affidavit of Perry Redd, Affidavit of Gary C. Ayers, and Redd Letter.

<sup>48</sup> *See William F. Wallace and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d 1424, 1427 (1974).

<sup>49</sup> *Genesee Communications, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 3595 (1988). The applicant need not own the proposed site and may even work out the final details for a lease sometime in the future. The “reasonable assurance” standard is satisfied by “[s]ome clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated . . . .” *Elijah Broadcasting Corp.*, Memorandum Opinion and Order, 5 FCC Rcd 5350, 5351 (1990).