



Federal Communications Commission  
Washington, D.C. 20554

September 23, 2014

*In Reply Refer to:*  
1800B3-ATS

Ms. Susan Davis  
Faith Ministries Association  
240 Railroad Avenue  
Center Moriches, NY 11949

In re: Faith Ministries Association  
New LPFM, Sayville, New York  
Facility ID No. 197471  
File No. BNPL-20131114BUA

**Petition for Reconsideration**

Dear Ms. Davis:

We have before us a Petition for Reconsideration filed by Faith Ministries Association (“Petitioner”), seeking reconsideration of the Media Bureau (“Bureau”) dismissal<sup>1</sup> of its application for a new LPFM station at Sayville, New York (“Application”). For the reasons set forth below, we will deny the Petition.

**Background.** Petitioner filed the Application during the October 2013 LPFM Filing Window, proposing to serve Sayville, New York, on Channel 284. The Bureau dismissed the Application on January 2, 2014, because it failed to comply with the minimum spacing requirements of Sections 73.807(a)(1) and (c) of the Commission’s Rules (“Rules”) with regards to co-channel station WSPK, Poughkeepsie, New York; and first-adjacent translator station W283BA, Selden, New York.<sup>2</sup> Petitioner filed the Petition on February 6, 2014, seeking reinstatement of the Application pursuant to the Commission’s *nunc pro tunc* policy and proposing a new transmitter site.<sup>3</sup> Petitioner asserts that it used the Commission’s LPFM Channel Finder website to determine its original proposed site, and that the tool indicated its proposal satisfied the spacing requirements.<sup>4</sup>

**Discussion.** The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission’s original order, or raises additional facts, not known or existing at the time of the petitioner’s last opportunity to present such matters.<sup>5</sup> Petitioner has not met this burden.

Petitioner’s reliance on the *Nunc Pro Tunc Public Notice* is misplaced. The Bureau has explained that applications dismissed for violations of Section 73.807 are not eligible for *nunc pro tunc*

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<sup>1</sup> See *Letter to Faith Ministries Association from James D. Bradshaw*, Ref 1800B3 (MB Jan. 2, 2014) (“*Dismissal Letter*”). See also *Broadcast Actions*, Public Notice, Report No. 48150 (MB Jan. 7, 2014) (“*Dismissal Public Notice*”).

<sup>2</sup> *Dismissal Letter* at 1. See also 47 C.F.R. § 73.807(a)(1) and (c). The *Dismissal Letter* further states that the Application was dismissed without opportunity to amend pursuant to Section 73.870(c) of the Rules. See 47 C.F.R. 73.870(c) (“[A]pplications . . . the fail to meet the 73.807 minimum distance separations . . . will be dismissed without any opportunity to amend such applications.”).

<sup>3</sup> Petition at 1, citing *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR. 2d 776 (1984) (“*Nunc Pro Tunc Public Notice*”).

<sup>4</sup> Petition at 1.

<sup>5</sup> See 47 C.F.R. § 1.106(c), (d). See also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

reinstatement, but are instead subject to Section 73.870(c) of the Rules.<sup>6</sup> That rule – adopted after the *Nunc Pro Tunc Public Notice* – provides that an LPFM application will be dismissed without opportunity to amend if, as of the closing date of the LPFM filing window (in this case, November 15, 2013), the application fails to meet the minimum distance separation requirements of Section 73.807 for existing applications and facilities.<sup>7</sup> LPFM applicants were advised that a failure to comply with the spacing rules would result in dismissal of the application without an opportunity to amend.<sup>8</sup> The Application, as of the close of the LPFM filing window, failed to comply with Section 73.807 with regards to W242CD and WSPK. Moreover, permitting Petitioner to amend the Application at this point would frustrate the processing efficiencies which Sections 73.807 and 73.870 were designed to promote and would be unfair to the many applicants who fully complied with all filing requirements.<sup>9</sup>

Additionally, we reject Petitioner's suggestion that the Application should be reinstated on the grounds that the LPFM Channel Finder indicated there was availability at the proposed site. The *LPFM Public Notice* warned applicants that it was only a tool to help locate available LPFM channels, and that no guarantee was made that channel would be available.<sup>10</sup> Thus, Petitioner's reliance on the LPFM Channel Finder is no excuse for failing to comply with Section 73.807. Moreover, using the coordinates provided in the Application, the LPFM Channel Finder indicates that there are no available LPFM channels at that site, including Channel 284, which is identified as being short-spaced to WSPK<sup>11</sup> and W283BA.<sup>12</sup>

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<sup>6</sup> *Media Bureau Provides Further Guidance on the Processing of Form 318 Applications filed in the LPFM Window*, Public Notice, 28 FCC Rcd 16366, 69 (MB 2013).

<sup>7</sup> 47 C.F.R. § 73.870(c) (“Applications subject to [Section 73.870(b)] that fail to meet the § 73.807 minimum distance separations with respect to all applications and facilities in existence as the date of the pertinent public notice in [Section 73.870(b)] other than to LPFM station facilities proposed in applications filed in the same window, will be dismissed without any opportunity to amend such applications.”).

<sup>8</sup> *See Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15 – October 29, 2013 Low Power Filing Window*, Public Notice, 28 FCC Rcd 8854, 8856 (MB 2013) (“*LPFM Public Notice*”) (“Following the close of the window, the Commission staff will return and/or dismiss applications and amendments not submitted in accordance with the procedures described in this Public Notice. No curative amendments for such applications and amendments will be accepted after the close of the window. . . . An applicant should consider using a consulting engineer or a party familiar with the LPFM technical rules to determine the technical acceptability of its application . . . .”); *see also* 47 C.F.R. § 73.870(c).

<sup>9</sup> *See Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2257 (2000) (“In accordance with our window filing procedure for commercial broadcast applications, after the LPFM window closes, the staff initially will screen applications for the purpose of identifying those that are mutually exclusive and those that fail to protect existing broadcast stations in accordance with the standards adopted herein. Applications that fail to properly protect these existing stations will be dismissed without the applicant being afforded an opportunity to amend. This will increase the speed and efficiency with which LPFM applications can be processed by the staff.”).

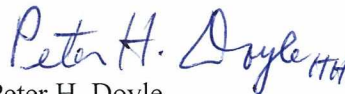
<sup>10</sup> *LPFM Public Notice*, 28 FCC Rcd at 8856 (“Please note that the LPFM Channel Finder tool is intended solely to assist LPFM applicants in tentatively identifying available FM channels. There is no guarantee that channels represented as ‘available’ will be technically acceptable at the time an application is filed. An applicant should consider using a consulting engineer or a party familiar with the LPFM technical rules to determine the technical acceptability of its application”). The website for the LPFM Channel Finder website contained a similar notice.

<sup>11</sup> File No. BLH-19840802CR, granted May 28, 1985.

<sup>12</sup> File No. BPFT-20130514AAN, granted June 17, 2013.

**Conclusion/Actions.** Accordingly, for the reasons set forth above, IT IS ORDERED THAT the February 6, 2014, Petition for Reconsideration filed by Faith Ministries Association IS DENIED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by a stylized monogram "HH".

Peter H. Doyle  
Chief, Audio Division  
Media Bureau