



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

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In Reply Refer To:
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In re: LPFM MX Group 405

Irish, Inc.
New LPFM, Charleston, WV
Facility ID Number: 195705
File Number: BNPL-20131114BNV

Masque Informed
New LPFM, Charleston, WV
Facility ID Number: 194844
File Number: BNPL-20131112AKI

**Informal Objection and
Petitions to Deny**

Dear Counsel, Mr. Long, Ms. Karr, Mr. Withers, and Mr. Sergi:

We have before us: 1) the applications of Irish, Inc. ("Irish") and Masque Informed ("Masque") for new LPFM stations at Charleston, WV ("Irish Application" and "Masque Application," respectively); 2) the Petition to Deny the Irish Application filed by Summit Media Broadcasting, LLC ("Summit"), and the Petition to Deny the Irish Application filed by Richard Withers ("Summit Petition" and "Withers Petition," respectively); and 3) the Informal Objection ("CMB Objection") to the Masque Application

filed by Coal Mountain Broadcasting (“CMB”).¹ For the reasons set forth below, we: 1) treat the Withers Petitions as an Informal Objection and grant it; 2) dismiss the Summit Petition and the Irish Application; 3) deny the CMB Objection; and 4) grant the Masque Application.²

Background. Irish and Masque filed their respective applications during the October 2013 LPFM filing window. The Bureau determined that the Irish Application, the Masque Application, and the application filed by CMB were mutually exclusive and identified them as LPFM MX Group 405.³ On September 5, 2014, the Bureau identified the Irish Application as the tentative selectee of LPFM MX Group 405, began a 30-day period for filing petitions to deny against the application, and began a 90-day period in which the applicants could file major change amendments in order to resolve their mutual exclusivities.⁴ During that time, Masque and CMB filed technical amendments that resolved their mutual exclusivities.

Withers argues that the Irish Application should be dismissed because one of Irish’s board members – Mark Sadd – holds interests in two AM stations.⁵ Specifically, Withers states that Sadd is the President of St. Paul Radio Company (“St. Paul”), which is the licensee of Stations WLUX(AM), Dunbar, West Virginia, and WMUX(AM), Hurricane, West Virginia.⁶ Withers also notes that Irish failed to disclose Sadd’s interest in WLUX and WMUX in the Irish Application.⁷ Accordingly, Withers argues that Sadd’s interest in WLUX and WMUX are attributable to Irish and thus the Irish Application should be dismissed.⁸

CMB argues that the Masque Application should be dismissed because it is ineligible to hold an LPFM license. CMB notes that Masque has not provided any documentation showing that it was recognized as a nonprofit entity at the time it filed the Masque Application, and that West Virginia only recognizes Masque as an assumed name of Christopher Long.⁹ Accordingly, CMB argues that Masque is in fact an individual who cannot hold an LPFM license.¹⁰

¹ The Withers Petition and the Summit Petition were filed on October 3, 2014, and the CMB Objection was filed on October 29, 2014. No Opposition has been filed to any of these pleadings.

² Summit argues that the Irish Application should be dismissed because the LPFM station could cause interference to listeners of Station WDBS(FM), Sutton, West Virginia, which is licensed to Summit. Because we are dismissing the Irish Application on other grounds, we need not consider this argument.

³ *Media Bureau Identifies Mutually Exclusive Applications Filed in the LPFM Window and Announces 60-Day Settlement Period; CDBS Is Now Accepting Form 318 Amendments*, Public Notice, 28 FCC Rcd 16713 (MB 2013).

⁴ *Commission Identifies Tentative Selectees in 111 Groups of Mutually Exclusive Applications Filed in the LPFM Window; Announces a 30-Day Petition to Deny Period and a 90-Day Period to File Voluntary Time-Share Proposals and Major Change Amendments*, Public Notice, 29 FCC Rcd 10847 (2014).

⁵ Withers Petition at 1.

⁶ *Id.* The most recent ownership report for WLUX – filed on December 2, 2013 – identifies Sadd as the president of St. Paul. *See* File No. BOA-20131202BHD. The most recent ownership report for WMUX – filed June 3, 2013, also identifies Sadd as the president of St. Paul. *See* File No. BOA-20130603BBU.

⁷ Withers Petition at 1. *See also* Irish Application at Section II, Question 5.b.

⁸ Withers Petition at 1, *citing* 47 C.F.R. § 73.860.

⁹ CMB Objection at 1. *See also* Masque Application at Attachment 10 (Business Registration Certificate issued to “Christopher Long DBA Masque Informed”). Long is listed as the CEO of Masque and one of four board members. *See* Masque Application at Section II, Question 3.a.

¹⁰ CMB Objection at 1, *citing* 47 C.F.R. § 73.853.

Discussion. We initially find that the Withers Petition does not meet the requirements for a petition to deny as set forth in Section 309(d) of the Communications Act of 1934, as amended, because it is not accompanied by an affidavit supporting its factual allegations or an affidavit establishing Withers' standing to file a petition to deny.¹¹ We will therefore consider the Withers Petition as an informal objection under Section 73.3587 of the Rules.¹² Pursuant to Section 309(d) of the Act, informal objections, like 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.¹³

Irish Application. Section 73.860(a) of the Rules prohibits a party from holding an attributable interest in both an LPFM station and a full-service broadcast station.¹⁴ The instructions to FCC Form 318 explicitly state that a party with an interest in a broadcast station – such as Sadd – must identify this interest and pledge to divest that interest.¹⁵ Irish did not do so, and Sadd has not divested his interest in St. Paul. Accordingly, we will dismiss the Irish Application.

Masque Application. The Rules provide that an LPFM station may be licensed to a nonprofit educational organization for the advancement of an educational program.¹⁶ An applicant “must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation. Applicants that fail to provide these materials are subject to dismissal.”¹⁷ Although the certificate provide by Masque does not indicate whether it was recognized as a nonprofit entity, a review of the records for the West Virginia Secretary of State indicates that Masque was recognized as an unincorporated nonprofit organization at the time it filed the Masque Application.¹⁸ Masque has therefore

¹¹ 47 U.S.C. § 309(d)(1) (“The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with subsection (a) of this section.... Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof.”).

¹² See 47 C.F.R. § 73.3587.

¹³ 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).

¹⁴ 47 C.F.R. § 73.860(a).

¹⁵ See Instructions for FCC Form 318, Section II, Question 5(b) (“If the applicant (or any party to the application) has an attributable interest in a broadcast station or other media outlet that is prohibited under the Commission’s cross-ownership rule, the applicant (or the party to the application) must divest the interest prior to the commencement of operations of the LPFM station. In such circumstances, the applicant must respond “No” to the certification required by Question 5b and submit an explanatory exhibit identifying the broadcast station or other media outlet in which the applicant (or the party to the application) holds an attributable interest and setting forth the applicant’s (or party’s) intention to divest such interest.”).

¹⁶ 47 C.F.R. § 73.853(a). See also *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2213 (2000) (“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)].”).

¹⁷ Instructions to FCC Form 318, Section II, Question 2, Subsections 2(a).

¹⁸ See <http://apps.sos.wv.gov/business/corporations/organization.aspx?org=322806>. On January 28, 2014, Masque dissolved and reincorporated as a nonprofit corporation, Masque Informed, Incorporated. See <http://apps.sos.wv.gov/business/corporations/organization.aspx?org=327624>. The members of the corporation identified in the Masque Application – Christopher G. Long, Kenneth L. Lavender, Daniel T. Haggart, and William F. Brogan – are the same as the members of Masque Informed, Incorporated. Thus there has been no disruption in the continuity of Masque’s existence and status as a nonprofit entity.

met the eligibility requirement set forth in Section 73.853(a).¹⁹ We will thus deny the CMB Objection and grant the Masque Application.

Conclusion. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Petition to Deny filed by Richard Withers on October 3, 2014, treated as an Informal Objection, IS GRANTED.

IT IS FURTHER ORDERED, that the Petition to Deny filed by Summit Media Broadcasting, LLC, on October 3, 2014, IS DISMISSED as moot.

IT IS FURTHER ORDERED, that the Informal Objection filed by Coal Mountain Broadcasting, Inc., on October 29, 2014, IS DENIED.

IT IS FURTHER ORDERED, that the application of Irish, Inc. (BNPL-20131114BNV), for a new LPFM station at Charleston, WV, IS DISMISSED.

IT IS FURTHER ORDERED, that the application of Masque Informed (BNPL-20131112AKI), for a new LPFM station at Charleston, WV, IS GRANTED.

Sincerely,

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Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Irish, Inc.

¹⁹ 47 C.F.R. § 73.853(a). See also *Application for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13393-96 (2013) (Commission relies on whether an LPFM applicant is recognized as a nonprofit entity under state law at the time of filing).