



Federal Communications Commission  
Washington, D.C. 20554

January 22, 2015

*In Reply Refer To:*  
1800B3-ATS

Mr. Stewart Lee  
Westside High School  
806 Pearman Dairy Road  
Anderson, SC 29625

Ms. Phyllis Graham  
Spreading Cheer  
P.O. Box 242  
Sandy Springs, SC 29677

In re: LPFM MX Group 311

Westside High School  
New LPFM, Anderson, SC  
Facility ID Number: 194226  
File Number: BNPL-20131030AHY

Spreading Cheer  
New LPFM, Sandy Springs, SC  
Facility ID Number: 196993  
File Number: BNPL-20131114BMR

**Petition to Deny**

Dear Mr. Lee and Ms. Graham:

We have before us: 1) the applications of Westside High School (“WHS”) and Spreading Cheer for new LPFM stations at two communities in South Carolina (“WHS Application” and “Spreading Cheer Application,” respectively); and 2) the Petition to Deny the WHS Application filed by Spreading Cheer.<sup>1</sup> For the reasons set forth below, we grant the Spreading Cheer Petition, dismiss the WHS Application, and accept for filing the Spreading Cheer Application.

**Background.** WHS and Spreading Cheer filed their respective applications during the October 2013 LPFM filing window. The Media Bureau (“Bureau”) determined that the WHS Application and the Spreading Cheer Application were mutually exclusive and identified them as LPFM MX Group 311.<sup>2</sup> On September 5, 2014, the Commission identified the WHS Application as the tentative selectee of LPFM MX Group 311, began a 30-day period for filing petitions to deny against the WHS Application, and began a 90-day period in which both applicants could file major change amendments in order to resolve their mutual exclusivities.<sup>3</sup>

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<sup>1</sup> The Spreading Cheer Petition was filed on October 6, 2014. No Opposition has been filed.

<sup>2</sup> *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).

<sup>3</sup> *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).

Spreading Cheer argues that the WHS Application should be dismissed. It notes that WHS is actually part of Anderson School District Five (“Anderson Five”) and that WHS itself is not recognized by the State of South Carolina as a separate legal entity from Anderson Five, nor has WHS provided any documentation to show that it is an eligible nonprofit entity.<sup>4</sup> Spreading Cheer further argues that the parties to the WHS Application<sup>5</sup> may not have been authorized by Anderson Five to file the application.<sup>6</sup>

**Discussion.** Pursuant to Section 309(d) of the Communications Act of 1934, as amended, 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>7</sup> Spreading Cheer has met this requirement and we will dismiss the WHS Application.

The Commission’s Rules (“Rules”) provide that an LPFM station may be licensed to a nonprofit educational organization for the advancement of an educational program.<sup>8</sup> The Instructions to FCC Form 318 do not require that a public entity such a high school provide documentation showing that it is a nonprofit organization.<sup>9</sup> However, Section 73.3513(a)(5) of the Rules states that an application filed by a government entity, such as WHS, must be signed by “appointed officials as may be competent to do so under the law of the applicable jurisdiction.”<sup>10</sup> The Instructions for FCC Form 318 specify that for unincorporated educational institutions, such authorized officials include “a school superintendent, officer of the school board, or a university officer.”<sup>11</sup> The WHS Application was signed by Lee, who identifies himself as a teacher at WHS. This does not satisfy our requirements for certification.<sup>12</sup> Additionally, the

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<sup>4</sup> Petition at 1-2.

<sup>5</sup> The parties are identified as Joel Gray (Director), Stewart Lee (Assistant Director), and Henry Adair (Principal). See WHS Application at Section 2, Question 3.a.

<sup>6</sup> *Id.* at 2. The Petition also argues that WHS does not have reasonable assurance of site availability because it proposes a 60 meter (196 foot) tower in a commercial parking lot, and such a tower would require registration with the Federal Aviation Administration, which WHS has failed to do. See Petition at 3 and WHS Application at Section IV, Questions 2 and 5. Because we are dismissing the WHS Application on other grounds, we need not address these arguments.

<sup>7</sup> 47 U.S.C. § 309(d).

<sup>8</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) (“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>9</sup> Instructions for FCC Form 318, Section II, Question 2, Subsection 2(a) (“A nonprofit educational organization can be a public entity (such as a governmental agency) or a private, nonprofit entity which operates a bona fide, full-time school in the community where it proposes to operate. Under the Commission’s standards, these organizations generally are presumed to have an educational purpose, and need only demonstrate how their proposed station programming will be used to advance their educational purpose.”).

<sup>10</sup> See 47 C.F.R. § 73.3513(a)(5); see also *Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705 (1991) (dismissing application that did not comply with signature requirement of Section 73.3513); *Central Florida Communications Group, Inc., et al.*, Hearing Designation Order, 6 FCC Rcd 522, 523 (1991) (same); *Baton Rouge Progressive Network*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 905, 909 (MB 2010) (error for staff to process application not signed by principal of corporation as required by Section 73.3513).

<sup>11</sup> Instructions for FCC Form 318, General Instructions, Certifications.

<sup>12</sup> Recently, a school district requested that the Bureau dismiss an LPFM application filed by a member high school because the school itself did not have authority to submit such a filing. That application was not signed by a member of the school board or a similar official. See File No. BNPL-20131115AAS. Requiring officers or board

WHS Application fails to identify the members of the Anderson Five school board, who are in fact the individuals who should have been identified as the parties to an application properly filed on behalf of Anderson Five or any school operating under the authority of Anderson Five.<sup>13</sup> We will accordingly dismiss the WHS Application. Because we are dismissing the WHS Application, the Spreading Cheer Application is therefore the new tentative selectee of LPFM MX Group 311.<sup>14</sup>

**Conclusion.** Accordingly, for the reasons set forth above, IT IS ORDERED, that the Petition to Deny filed by Spreading Cheer on October 6, 2014, IS GRANTED.

IT IS FURTHER ORDERED, that the application of Westside High School (BNPL-20131030AHY) for a new LPFM station at Anderson, South Carolina, IS DISMISSED.

IT IS FURTHER ORDERED, that the application of Spreading Cheer (BNPL-20131114BMR) for a new LPFM station at Sandy Springs, South Carolina, is ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the application, we direct the staff, by public notice, TO GRANT the application of Spreading Cheer.

Sincerely,



Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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members of the school board to sign applications ensures that the applications are authorized by the competent entity. Processing of unauthorized applications creates unnecessary burden for the staff and may result in the issuance of a construction permit that will not be constructed, while denying other qualified applicants the opportunity to obtain a permit.

<sup>13</sup> See Instructions to FCC Form 318, Section II, Question 3 (“Non-stock Corporations or Other Non-Stock Entities. The applicant . . . and governing board members of the applicant . . . are considered to be parties to the application.”)

<sup>14</sup> See *Media Bureau Provides Further Guidance on the Processing of Form 318 Applications Filed in the LPFM Window*, Public Notice, 28 FCC Rcd 16366 (MB 2013) (“The Bureau will analyze petitions to deny filed against each tentative selectee, and then either grant or dismiss that application. In certain cases, the Commission will identify a successor tentative selectee or selectees. New tentative selectees also will be subject to petitions to deny.”); *July MX Groups Public Notice*, 29 FCC Rcd at 10852 (Bureau has delegated authority to dismiss defective application and identify new tentative selectee).