



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

November 30, 2015

*In Reply Refer To:*  
1800B3-EA/ATS

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Mr. Perry Redd  
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In re: Sincere Seven  
New LPFM, Washington, DC  
Facility ID No. 195472  
File No. BNPL-20131114AYL

**Petition for Reconsideration**

Dear Counsel and Mr. Redd:

We have before us: (1) a Petition for Reconsideration filed on September 11, 2014 ("Radio One Petition"), by Radio One Licenses, LLC ("Radio One") seeking reconsideration of the Media Bureau ("Bureau") decision<sup>1</sup> granting the above-referenced application ("Application") filed by Sincere Seven ("S7") for a construction permit for a new LPFM station at Washington, D.C..<sup>2</sup> For the reasons set forth below, we grant the Petition in part, dismiss the Supplement as untimely, return the Application to pending status, and direct S7 to amend the Application within 30 days of the date of this letter.

**Background.** S7 filed the Application on November 14, 2013,<sup>3</sup> and the Application was accepted for filing as a singleton on February 27, 2014.<sup>4</sup> On April 3, 2014, Radio One filed a Petition to Deny the Application, arguing that S7 was not an eligible nonprofit corporation at the time of the Application because: (1) there was no evidence that its articles of incorporation were ever filed with District of Columbia authorities; (2) the Notice of Business Tax Registration S7 had submitted as evidence of its nonprofit status did not establish corporate existence; (3) S7's tax exempt status was revoked by the IRS as of May 2010; (4) the tax exempt letter S7 submitted with the Application refers to a Tennessee organization also by the name of "Sincere Seven" ("TS7"), which was dissolved in 2005; and (5) all IRS correspondence submitted by S7 refers to the Taxpayer Identification Number

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<sup>1</sup> *Sincere Seven*, Letter, Ref. No. 1800B3-PPD (MB Aug. 19, 2014) ("*Staff Letter*").

<sup>2</sup> S7 filed an Opposition ("*Opposition*") on September 29, 2014. Radio One filed a Reply ("*Reply*") on October 3, 2014. Radio One filed a Supplement to the Petition on March 13, 2015 ("*Supplement*").

<sup>3</sup> See *Media Bureau Extends Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 15763 (2013).

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

originally used by TS7, which indicates that S7's District of Columbia tax account "was not established on behalf of a new D.C. corporation."<sup>5</sup>

In the *Staff Letter*, we rejected Radio One's argument and found that S7 was an eligible nonprofit organization because S7 met the requirements for an unincorporated nonprofit association under District of Columbia law.<sup>6</sup> The Bureau based its reasoning on the fact that the Application does not require the applicant to specify its type of organization, and that S7 submitted copies of its Articles showing S7's nonprofit, educational purpose, along with online confirmation that the Articles had been submitted to the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA").<sup>7</sup> These Articles, we found, constituted the governing principles of an unincorporated association under D.C. Code § 29-1102.<sup>8</sup> Therefore, we granted the Application.

In the Petition, Radio One claims that the Bureau erred in granting the Application because: (1) S7 represented itself as a corporation on the Application, so it cannot be treated as an unincorporated association;<sup>9</sup> (2) S7 is using the same Employer Identification Number ("EIN") as TS7, the defunct Tennessee corporation; and (3) S7 failed to list Perry Redd, an alleged officer of S7 and a convicted felon,<sup>10</sup> as a party to the Application.<sup>11</sup> In support of this last argument, Radio One provides: (1) a copy of IRS Form 990-EZ, filed for 2013 and signed by Redd;<sup>12</sup> (2) a copy of the DCRA Basic Business Online Submission confirmation page showing that S7 filed its articles of incorporation, and listing Redd as an officer;<sup>13</sup> and (3) citations to court decisions convicting Redd of "conspiracy to possess and possession of drugs and criminal contempt."<sup>14</sup> Radio One claims that S7 made a "serious omission and misrepresentation" by not listing Redd as a party to the Application, and that the felony is serious enough to require Commission action "regardless of whether or not this information could have been discovered earlier."<sup>15</sup>

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<sup>5</sup> *Staff Letter* at 2.

<sup>6</sup> *Id.* at 5-6. The Bureau also rejected claims from SEDC Communications Corporation and Radio One, respectively, that S7's proposed operation would create a ground level interference zone to second-adjacent station WQSR, and that S7 had not obtained reasonable assurance of site availability. These issues are not raised on reconsideration.

<sup>7</sup> *Id.* at 5.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> Petition at 2.

<sup>10</sup> S7 certified on the Application, Section II, Question 7, that no adverse finding had been made against any party to the Application.

<sup>11</sup> Petition at 2-4.

<sup>12</sup> *Id.*, Exhibit 2; *see id.* at 2 (claiming that the instructions to Form 990-EZ state that only an officer may sign the return).

<sup>13</sup> *Id.*, Exhibit 3.

<sup>14</sup> *Id.* at 3-4, *citing U.S. v. McCreary-Redd*, 475 F.3d 718 (6th Cir. 2007); *U.S. v. McCreary-Redd*, 628 F. Supp. 2d 764 (E.D. Tenn. 2007); *U.S. v. McCreary-Redd*, 407 Fed. Appx. 861 (6th Cir. 2010) (affirming convictions for conspiracy to possess cocaine base, possession of cocaine base, possession of a firearm by a felon, and criminal contempt).

<sup>15</sup> *Id.* at 3-4, *citing South Carolina Radio Fellowship*, 6 FCC Rcd 4823 (1991); *Drug Trafficking Policy*, 4 FCC Rcd 7533 (1989).

In its Opposition, S7 asserts that the Petition should be denied because: (1) S7 was recognized as a legal entity under D.C. law at time it filed the Application—and that S7’s corporate status is irrelevant because applicants are not required to be incorporated;<sup>16</sup> (2) dissolution of a corporation does not invalidate its EIN;<sup>17</sup> and (3) Perry Redd’s position is not that of an officer, but of “a manager serving at the pleasure of its board of directors,” and that Redd has acted on behalf of S7 as its Executive Director, “apropos of, and consistent with, positions bearing the title ‘President’ or ‘CEO’ with a traditional nonprofit organization.”<sup>18</sup>

In its Reply, Radio One asserts that “President” and “CEO” are standard officer positions within corporations, and notes that S7’s assertion that Redd is not an officer or director “is not supported by a declaration of anyone with personal knowledge of the facts.”<sup>19</sup> Radio One claims that Redd has “held himself out in a manner which would lead government agencies to conclude that he is an officer.”<sup>20</sup> Radio One also notes that no officers are listed as parties to the Application besides the Chairman of the Board, and suggests that the Application may be incomplete, “unless the corporation in fact has no officers and the applicant can demonstrate that the District of Columbia permits corporations to operate with no officers.”<sup>21</sup>

In the Supplement, Radio One cites an unpublished letter<sup>22</sup> in which the Bureau denied an LPFM applicant because the applicant was not recognized by the District of Columbia as a nonprofit entity.<sup>23</sup> Radio One claims that it was inconsistent for the Bureau to “reclassify” S7 as an unincorporated association, and then to reject a similar applicant because its “claimed status was not recognized by the same governmental authority under which [S7] claimed incorporation.”<sup>24</sup> Radio One also notes that William L. Tucker, who signed the S7 Application, was not listed as an officer on the Application or S7’s District of Columbia business application, and therefore, the Application was not signed by an authorized signer.<sup>25</sup> Radio One also asserts that the fact that the *Group 78 Letter* is unpublished “does not relieve the Commission of its legal obligation to treat similar situations in the same manner.”<sup>26</sup> Radio One cites Section 0.445(e) of the Rules, which states that unpublished decisions may be relied on against persons who have “actual notice” of the document in question, and

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<sup>16</sup> Opposition at 2-3.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> Reply at 2-3.

<sup>20</sup> *Id.* at 3.

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

<sup>22</sup> LPFM MX Group 78, Letter, Ref. No. 1800B3-ATS (MB Jan. 21, 2015) (“Group 78 Letter”).

<sup>23</sup> Supplement at 2. The *Group 78 Letter* dismissed the application of HR-57 Foundation because its corporate status had been revoked by the District of Columbia and it had not been reinstated. See *Group 78 Letter* at 3.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 2-3 (“[A]n unauthorized signer was one of the reasons why one of the applications in the [Group 78] Letter case was dismissed.”).

<sup>26</sup> *Id.* at 3.

Radio One states that “the requirement that a corporate applicant have completed the incorporation process prior to filing was publicly announced by the Commission before [S7] filed its application.”<sup>27</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>28</sup> It is settled Commission policy that petitions for reconsideration are not to be used for the mere re-argument of points previously advanced and rejected.<sup>29</sup> Radio One's argument that the Bureau cannot treat S7 as an unincorporated association is procedurally valid, as it could not realistically have been made earlier. However, Radio One previously argued that S7 was using the same TIN/EIN<sup>30</sup> as dissolved corporation TS7, and this was raised again in the Petition. Furthermore, Radio One had an opportunity to argue that Redd should have been listed as a party to the Application, and to submit the materials in the Petition when it filed the August 8, 2014 Petition to Deny, yet it failed to do so. Therefore, the Petition is procedurally defective under Section 1.106(c) of the Rules.<sup>31</sup> However, in light of the seriousness of the allegations and S7's failure to disclose Redd's role as an Executive Director, we believe that the public interest would be best served by exercising our discretion to address Radio One's claims and reconsider our grant of the Application.<sup>32</sup>

**Eligibility.** As we have stated before, an LPFM applicant's corporate status does not affect its eligibility as long as the applicant shows that it is a nonprofit educational organization, and that it will use the proposed station to advance an educational program.<sup>33</sup> Radio One cites no rule or case law stating that the Bureau must assess an applicant's eligibility based on the type of organization the applicant purports to be. Moreover, S7 is now listed in the District of Columbia's Corporations Division database as a “non-profit corporation” with an effective date

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<sup>27</sup> *Id.* at 3-4, citing 47 C.F.R. § 0.445(e); *Applications for Review of Decisions Regarding Six Applications for New LPFM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390 (2013).

<sup>28</sup> See 47 C.F.R. § 1.106(b), (c); 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).

<sup>29</sup> See, e.g., *John F. Garziglia, Esq.*, Letter, 28 FCC Rcd 15738 (MB 2013).

<sup>30</sup> These are the same number.

<sup>31</sup> 47 C.F.R. § 1.106(c).

<sup>32</sup> See, e.g., *New York Telephone Co.*, Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 3303, 3304 (1991), *aff'd sub nom. New York State Department of Law v. FCC*, 984 F.2d 1209 (D.C. Cir. 1993) (declining to dismiss a petition for reconsideration that did not satisfy the requirements of Section 1.106(b)(1) because the public interest would be best served by “exercising our discretion to address petitioners' claims and clarify our action in this proceeding”); see generally 47 C.F.R. § 1.106(c)(2) (A procedurally-defective petition for reconsideration may be granted “if the Commission or the designated authority determines that consideration of the facts or arguments relied on is required in the public interest”).

<sup>33</sup> See *Montmorenci United Methodist Church*, Letter, 22 FCC Rcd 11110, 11112 (MB 2007) (“[T]here is no requirement in the Commission's LPFM Rules that applicants be incorporated. Eligible applicants must be non-profit educational organizations, but may include NCE institutions, non-stock corporations, associations, state and local governments, or other entities recognized under state law.”).

of October 21, 2013, which is a three weeks before S7 filed the Application.<sup>34</sup> Therefore, we affirm, albeit on different grounds, the staff's finding that S7 was an eligible nonprofit organization at the time it filed the Application.<sup>35</sup>

*Parties to the Application.* FCC Form 318 requires applicants to list each party to the application including, "as applicable, the applicant, its officers, directors, five percent or greater stockholders, non-insulated partners, members, and all other persons and entities with attributable interests."<sup>36</sup> Perry Redd is identified as the "Governor" of S7 in the District of Columbia's Corporations Division database.<sup>37</sup> The District of Columbia code defines "Governor," within the context of nonprofit corporations, as a "Director or trustee of a nonprofit corporation."<sup>38</sup> Furthermore, in its Articles of Incorporation, S7 describes Redd as an "Executive Director." Therefore, Redd apparently qualifies as a director and should have been listed as a party to the Application. In addition, District of Columbia law requires that nonprofit corporations have at least two officers,<sup>39</sup> and S7 has only listed one officer as a party to the Application.<sup>40</sup> Alternatively, based on S7's characterization, Redd is an officer of the corporation.<sup>41</sup> Whether he is treated as an officer, director, or both, Redd's felony convictions were required to be disclosed.

We will therefore return the Application to pending status and provide 30 days for S7 to amend to include Redd and *any and all* other current officers or directors as parties to the Application under the Commission's Rules.<sup>42</sup> S7 must also update any other information provided in the Application to reflect the addition of Redd (or others) as parties to the

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<sup>34</sup> CorpOnline Web Portal, <https://corp.dca.dc.gov/Account.aspx/LogOn?ReturnUrl=%2f> (register for free login; select "Business Filings Search" tab and search "Sincere Seven" in "Inquiry" field) ("CorpOnline").

<sup>35</sup> Since we have ample evidence that S7 is a non-profit organization as required by Section 73.853(a) of the Rules, we need not reach the issue of whether it has a valid TIN/EIN. Moreover, there is no requirement that an LPFM applicant obtain such a number or otherwise be recognized by the federal government.

<sup>36</sup> Application, Section II, Question 3.

<sup>37</sup> CorpOnline, *supra* note 34 (select "Governors" tab). Redd is also identified as S7's incorporator in both the records of the Corporations Division and the S7's Articles of Incorporation. See Application at Attachment 2.

<sup>38</sup> D.C. Code § 29-101.02(18)(B).

<sup>39</sup> D.C. Code § 29-406.40(a) ("The officers of a nonprofit corporation shall be the individuals who hold the offices described in its articles of incorporation or bylaws or are appointed or elected in accordance with the articles and bylaws or as authorized by the board of directors. At a minimum, a nonprofit corporation shall have 2 separate officers, one responsible for the management of the corporation, who may be referred to as the 'President' or by any other term used in its articles of incorporation or bylaws and another responsible for the financial affairs of the corporation, who may be referred to as the 'Treasurer', or by any other term used in its articles of incorporation or bylaws.").

<sup>40</sup> Application at Section II, Question 3.a.

<sup>41</sup> Opposition at 3 (stating that Redd has acted on behalf of S7 as its Executive Director, "apropos of, and consistent with, positions bearing the title 'President' or 'CEO' with a traditional nonprofit organization.").

<sup>42</sup> The Bureau may return an application to pending status to permit an applicant to comply with the Rules. See, e.g., *Threshold Communications*, Letter, 29 FC Rcd 15300 (MB 2014) (returning application to pending status where applicant did not comply with local notice rule).

Application, and specifically disclose all of Redd's criminal convictions.<sup>43</sup> **Failure to amend the Application as specified within 30 days of the date of this letter will result in the dismissal of the Application for failure to prosecute an application or to respond to official correspondence pursuant to Section 73.3568(a)(1) of the Commission's Rules.**<sup>44</sup> We caution S7 to carefully review the relevant instructions and rule provisions before submitting its amended Application because "a false statement, even absent an intent to deceive, may constitute an actionable violation of Section 1.17 of the Rules."<sup>45</sup>

*Supplement.* The Supplement is untimely filed under Section 1.106(f) of the Rules and is therefore dismissed.<sup>46</sup> Moreover, even if we were to consider the arguments raised in it, we would reject them. The facts of the *Group 78 Letter* are distinguishable from those here. In the *Group 78 Letter*, the applicant, HR-57 Foundation, did not claim eligibility as an unincorporated nonprofit association, only as a nonprofit corporation, and was found ineligible on that basis only.<sup>47</sup> In contrast, S7 explained how it met the requirements for an unincorporated nonprofit association under District of Columbia law and cited the appropriate statute.<sup>48</sup> Therefore, in the *Staff Letter*, the Bureau properly analyzed S7's claim for eligibility as a nonprofit unincorporated association. Likewise, the issue of whether the application filed by Washington Peace Center was properly signed was raised in a Petition to Deny that application, and thus the Bureau addressed this issue in the *Group 78 Letter*. Radio One did not raise the issue of S7's compliance with Section 73.3513 of the Rules in its Petition to Deny the Application and is barred from doing so for the first time in an untimely supplement to a petition for reconsideration.

**Conclusion/Actions.** Accordingly, IT IS ORDERED, that the Petition for Reconsideration filed by Radio One Licenses, LLC on September 11, 2014, IS GRANTED to the extent indicated above and IS DENIED in all other respects.

IT IS FURTHER ORDERED that the Supplement filed by Radio One Licenses, LLC, on March 13, 2015, IS DISMISSED as untimely.

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<sup>43</sup> See Application, Section II, Question 7.

<sup>44</sup> 47 C.F.R. § 73.3568(a)(1).

<sup>45</sup> See, e.g., *Applications of Detroit Public Schools*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13688, 13692 (MB 2006)..

<sup>46</sup> See 47 C.F.R. § 1.106(f); see also *Holy Family Communications, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 15687 n.5 (MB 2013).

<sup>47</sup> *Group 78 Letter* at 1.

<sup>48</sup> *Staff Letter* at 3.

IT IS FURTHER ORDERED that the application of Sincere Seven (File No. BNPL-20131114AYL) for a construction permit for a new LPFM station at Washington, DC, IS RETURNED TO PENDING STATUS, and WILL BE DISMISSED AS OF December 30, 2015, if not completed and acceptable for filing by that date.

Sincerely,

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

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Ms. Michelle Bradley  
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