



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

August 17, 2016

*In Reply Refer To:*  
1800B3-1B

Mr. Perry Redd  
Sincere Seven  
422 Marietta Place, N.W.  
Washington, DC 20011

Peter Tannenwald, Esq.  
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In re: Sincere Seven  
WOOK-LP, Washington, DC  
Facility ID No. 195472  
File No. BNPL-20131114AYL  
**Petition for Reconsideration**

Dear Messrs. Redd and Tannenwald:

We have before us: (1) a June 9, 2016 Petition from Sincere Seven (S7)<sup>1</sup> seeking reconsideration of a Decision<sup>2</sup> which dismissed its Application<sup>3</sup> to construct a new low power FM (LPFM) station at Washington, D.C.; and (2) a June 16, 2016 Opposition by Radio One Licenses, LLC (Radio One). For the reasons set forth below, we dismiss the Petition.

**Background.** In 2014, the Media Bureau (Bureau) granted the Application and, at S7's request, assigned call letters WOOK-LP to the unbuilt station. The Bureau, however, rescinded the grant and returned the Application to pending status in November 2015, after Radio One raised material questions about whether Perry Redd (Redd), a convicted felon, was a party to S7's Application.<sup>4</sup> In December 2015, William Tucker (Tucker), founder of WOOK Radio DC (WOOK

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<sup>1</sup> S7 Petition for Reconsideration of FCC's Dismissal of Sincere Seven's LPFM Application (filed Jun. 9, 2016) (Petition).

<sup>2</sup> *Peter Tannenwald, Esq.*, Letter Order, Ref. No. 1800B3-ATS (May 10, 2016) (Decision).

<sup>3</sup> File No. BNPL-20131114AYL (filed Nov. 14, 2013) (Application).

<sup>4</sup> The Bureau had rejected Radio One's challenge of S7's non-profit status but, on reconsideration, Radio One raised new questions of whether S7 should have listed Redd as a party and, if so, whether Redd's convictions conflicted with S7's certification of no adverse findings. *See Sincere Seven*, Letter Order, Ref. No. 1800B3-PPD (MB Aug. 19, 2014) (*First Staff Letter*); Application, Section II, Question 7; *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 drug and firearm possession). The Bureau found that S7 had erred in not identifying Redd and his record because, notwithstanding S7's assertion that Redd was not an S7 officer, he was listed as such in S7's records with the District of Columbia and was described by S7 as its *de facto* President or CEO. *See Sincere Seven*, Letter Order, Ref. No. 1800B3-EA/ATS (Nov. 30, 2015) (*Second S7 Letter*) at 5-6.

RDC), contacted the Bureau in an attempt “to preserve” the Application.<sup>5</sup> Tucker claimed that WOOK RDC and S7 had, prior to application, entered into a Fiscal Sponsorship Agreement (FSA) which placed WOOK RDC in control of WOOK-LP.<sup>6</sup> Tucker, who had signed and submitted the Application under S7’s name, alleged that S7 breached the terms of the SFA and requested a waiver to enable WOOK RDC to take S7’s place as proposed permittee of WOOK-LP.<sup>7</sup> The Bureau, after examining the FSA and arguments of the parties, dismissed the Application. The Bureau determined that WOOK RDC was an undisclosed real party in interest<sup>8</sup> and that the FSA was effectively an agreement between S7 and WOOK RDC to prosecute a false application.<sup>9</sup> In particular, the Bureau concluded that S7 had acted as a “front” for WOOK RDC to game the Commission’s comparative point system and to use S7’s tax-exempt status to funnel donations to WOOK RDC.<sup>10</sup> In light of the dismissal, the Bureau dismissed Tucker’s waiver request as moot and did not reach the issue of whether Redd’s criminal record would have been a further basis for dismissing the Application.<sup>11</sup>

**Discussion.** The Commission will consider a petition for reconsideration only when the petitioner shows a material error in the original decision or raises changed circumstances or additional facts not known or existing at the petitioner’s last opportunity to present such matters.<sup>12</sup> Petitions that rely on facts that could have been presented earlier, or repeat arguments fully considered and rejected will be dismissed.<sup>13</sup> A petition for reconsideration of action on earlier petitions for reconsideration will be dismissed as repetitious unless the Commission determines that consideration is required in the public interest.<sup>14</sup>

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<sup>5</sup> WOOK RDC, Letter to Peter Doyle, Chief, Audio Division, FCC (filed Dec. 28, 2015).

<sup>6</sup> *Id.*; Tucker, Opposition to Supplement to Petition for Reconsideration (filed Dec. 28, 2015) (Tucker Opposition). The FSA was attached to the Tucker Opposition. *See* Sincere Seven’s Non-Profit Organization Fiscal Sponsorship Agreement with WOOK-LP Radio (Oct. 30, 2013) (SFA).

<sup>7</sup> The Rules provide that no party may assign or transfer an LPFM construction permit. 47 CFR § 73.853(d).

<sup>8</sup> A real-party-in-interest inquiry typically focuses on whether a third person “has an ownership interest, or will be in a position to actually or potentially control the operation of the station.” *Astroline Commc’ns Co. v. FCC*, 857 F.2d 1556, 1564 (D.C. Cir. 1998).

<sup>9</sup> Decision at 5.

<sup>10</sup> *Id.* S7 claimed points as an established local applicant, whereas WOOK RDC was founded just shortly before the Application was filed and would not have been able to claim such points.

<sup>11</sup> *Id.* at 5-6. The Bureau also noted that several other matters including a complete change in the composition of S7’s board and S7’s failure to respond to a Commission request for information would have been independent grounds for dismissing the Application. *Id.*

<sup>12</sup> *See* 47 CFR § 1.106.

<sup>13</sup> *Id.* at § 1.106(p).

<sup>14</sup> *Id.* at §§ 1.106(c)(2) and (k)(3).



S7's seminal argument is that the Bureau ignored evidence<sup>15</sup> by which S7 allegedly refuted the allegations forming the basis for the Bureau's real party in interest determination.<sup>16</sup> S7 contends that the Bureau, thus, reached speculative and incorrect conclusions about the nature of the FSA and the relationship between Tucker and S7. S7 emphasizes that: (1) S7 is an interested party to the Application and that Tucker merely acted as S7's agent and General Manager; (2) there was nothing "subversive" about not revealing the FSA, which merely created a community partnership; and (3) S7 terminated its relationship with Tucker and obtained a court order against him because he was allegedly mismanaging and falsely claiming ownership of the station.<sup>17</sup> S7 further contends that the only published reason for disqualifying an LPFM applicant is unlicensed operation,<sup>18</sup> and that the Bureau's reliance upon nondisclosure of the FSA as a basis for dismissing the Application amounts to an unpublished "new rule" that the Bureau created solely for "this moment."<sup>19</sup> Radio One responds that S7 is rearguing points to which the agency has already spoken and that the Bureau should, therefore, dismiss the Petition.

As noted in the Decision, the Bureau did not receive the First S7 Response directly, S7 did not supply a copy in response to the Bureau's request, but the Bureau obtained a copy from Radio One's counsel, whom S7 had timely served.<sup>20</sup> The Decision thus discussed and gave full consideration to S7's First and Second Responses. However, the Bureau found that S7's submissions were insufficient to rebut other evidence which indicated that the FSA put WOOK RDC in a position to potentially control the station and that WOOK RDC actually controlled the account with the Commission through which the Application was filed.<sup>21</sup> For example, although S7 submitted a 2015 court order requiring Tucker to stop holding himself out as affiliated with WOOK-LP following S7's termination of their relationship, nothing in the court ruling addressed Tucker's potential control at the time of application in 2013 when the relationship was still in effect. S7's Petition largely repeats its previously-considered arguments and, thus, shall be dismissed.

S7 makes one new argument, challenging the Bureau's authority to dismiss the Application. Although S7 does not demonstrate that this argument raises public interest concerns of such a magnitude to require consideration in a second reconsideration petition, we will briefly address it in the interest of a complete record. S7 is simply wrong when it claims that the Commission may dismiss an LPFM application only if the applicant has engaged in unauthorized

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<sup>15</sup> S7, in a document received by Radio One but not by the Commission, addressed its ongoing relationship with Redd and terminated relationship with Tucker. See S7 Response to Petition for Reconsideration (dated Dec. 29, 2015) (First Response). S7 later submitted a letter from its board of directors arguing that S7 was the Application's real party in interest and further outlining its history with Redd and Tucker. See S7 Letter to Marlene Dortch, Secretary, FCC (filed Apr. 26, 2016) (Second Response).

<sup>16</sup> Decision at 2. S7 also alleges errors pertaining to other issues, including Redd's criminal conviction, S7's failure to respond to a request for information, and a major change in S7's ownership. See Petition at 8–10. We will not address such arguments upon which the Bureau did not base its action.

<sup>17</sup> *Id.* at 2-3.

<sup>18</sup> *Id.* at 2, citing 47 U.S.C. § 301. See also *Making Appropriations for the Government of the District of Columbia for Fiscal Year 2001 Act*, Pub. L. No. 106-553, 114 Stat. 2762, amended by *Local Community Radio Act of 2010*, Pub. L. No. 111-371, 124 Stat. 4072.

<sup>19</sup> *Id.* at 3.

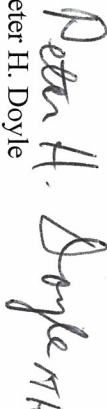
<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 3-5.

operations. While it is true that Congress enacted a provision which disqualifies LPFM applicants that have engaged in unauthorized broadcasting,<sup>22</sup> that provision is not the sole basis for dismissing LPFM applications. Requirements applicable to all Commission applications and to broadcast applications in general apply to the LPFM service.<sup>23</sup> It is the Commission's longstanding practice to consider, as it did here, whether a broadcast applicant should be disqualified when there is evidence that an undisclosed party is potentially in the position to control the proposed station.<sup>24</sup> We, thus, reject S7's contention that the Bureau's dismissal of the Application based on real party in interest considerations was a "new," previously undisclosed practice.

**Conclusion/Actions.** Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by Sincere Seven on June 9, 2016, is DISMISSED.

Sincerely,

  
Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>22</sup> See *supra*, n.18.

<sup>23</sup> See, e.g., 47 CFR §§ 1.17 (truthful and accurate statements), 1.65 (keeping applications accurate), 73.801 (broadcast rules applicable to LPFM including applicant obligation under § 73.1015 to make truthful written statements and Commission's ability under § 73.3566 to dismiss defective applications).

<sup>24</sup> See, e.g., *SL Commc'ns, Inc. v. FCC*, 168 F.3d 1354 (D.C. Cir. 1999) (upholding dismissal of television application where brother applied in name of sister to receive then-applicable affirmative action preference for female applicants); *KOWL, Inc.*, Memorandum Opinion and Order, 49 FCC2d 962, 964 (Rev. Bd. 1974) (adding real party in interest issue to examine FM applicant's qualifications in light of previously undisclosed financial involvement of two individuals, one of whom had been convicted of a drug-related felony).