



Federal Communications Commission  
Washington, D.C. 20554

September 29, 2014

*In Reply Refer to:*  
1800B3-ATS

Mr. Daniel J. Adams  
MVPBS  
25 Lake Street  
P.O. Box 863  
Vineyard Haven, MA 02559

In re: MVPBS  
New LPFM, Vineyard Haven, MA  
Facility ID No. 197573  
File No. BNPL-20131115AMU

**Petition for Reconsideration**

Dear Mr. Adams:

We have before us the Petition for Reconsideration (“Petition”) filed by MVPBS seeking reconsideration of a Media Bureau (“Bureau”) letter dismissing its application (“Application”) for a new LPFM station at Vineyard Haven, Massachusetts.<sup>1</sup> For the reasons set forth below, we deny the Petition.

**Background.** MVPBS filed the Application during the October 2013 LPFM Filing Window, proposing to serve Vineyard Haven, Massachusetts. In the Application, MVPBS indicated that it was formed in January 2012.<sup>2</sup> The Bureau dismissed the Application on July 22, 2014, because it failed to provide documentation demonstrating that MVPBS was a nonprofit organization eligible to be an LPFM licensee.<sup>3</sup>

MVPBS filed an amendment to the Application on August 28, 2014, which included the Petition requesting reinstatement of the Application.<sup>4</sup> In support, MVPBS provides a “Letter of Clarification” from Avi L. Liss, Esq. (“Liss Letter”), an attorney barred in Massachusetts, which states that MVPBS “formally designated as a Massachusetts 501c(3) – Non-Profit Corporation as of March 2014,” but that the “Radio Station”<sup>5</sup> has operated as a “not-for-profit, educational resource entity, since its inception in

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<sup>1</sup> See *Letter to MVPBS from James D. Bradshaw*, Ref 1800B3 (MB July 22, 2014) (“*Dismissal Letter*”). See also *Broadcast Actions*, Public Notice, Report No. 48290 (MB July 28, 2014).

<sup>2</sup> Application at Exhibit 10 (“Applicant was initially formed in January 2012 . . .”).

<sup>3</sup> *Dismissal Letter* at 1. See also FCC Form 318, Section II, Question 2; Instructions to FCC Form 318, Section II, Question 2, Subsection 2(a) (applicants that fail to provide documentary evidence of the organization’s nonprofit organizational status (*e.g.*, corporate charters or articles of incorporation) “are subject to dismissal”); 47 C.F.R. § 73.853(a) (entities eligible for LPFM licenses).

<sup>4</sup> An identical petition for reconsideration was filed with the Commission by mail on September 4, 2014. We will dismiss that petition.

<sup>5</sup> The Liss Letter does not explain what the “Radio Station” is. MVPBS states in the Application that it has been providing cable-access programming. See Application at Attachment 2. However, there is no reference to a radio station in the Application or subsequent amendments. We note that MVPBS certified that neither it nor any party to the Application has engaged in any unlicensed operation of a broadcast station. See Application, Section II, Question 8.

January of 2010.”<sup>6</sup> The records for the Secretary of the Commonwealth show that “MVPBS, Inc.” was organized under Massachusetts law on March 18, 2014.<sup>7</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>8</sup> MVPBS has not met this burden.

The Commission's Rules provide that an LPFM station may be licensed to a nonprofit educational organization for the advancement of an educational program.<sup>9</sup> 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.”<sup>10</sup>

MVPBS has failed to provide any documentation establishing its nonprofit status as of the date it filed the Application. Although the Liss Letter states that MVPBS has operated as a “not-for-profit, educational resource entity” since January of 2010, it does not state that MVPBS had any legal recognition under the laws of Massachusetts or clarify what type of entity MVPBS may have been prior to its March 2014 incorporation as MVPBS, Inc.<sup>11</sup> MVPBS has not provided any evidence that it was recognized as a nonprofit entity by the Commonwealth when it filed the Application,<sup>12</sup> and thus, MVPBS has failed to meet the eligibility requirement set forth in Section 73.853(a).<sup>13</sup>

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<sup>6</sup> Liss Letter at 1. MVPBS filed a subsequent Amendment on September 26, 2014, in which it changed its response to Exhibit 10 to indicate that it was established in January 2010.

<sup>7</sup> Mass. Sec. of Commonwealth Corp Civ. (ID No. 001131170).

<sup>8</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).

<sup>9</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>10</sup> Instructions to FCC Form 318, Section II, Question 2, Subsections 2(a).

<sup>11</sup> See n.7 *supra*.

<sup>12</sup> See *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) (affirming dismissal of LPFM applications where applicants did not incorporate until after filing their respective applications and did not demonstrate that they were recognized nonprofit entities under state law at the time of filing).

<sup>13</sup> 47 C.F.R. § 73.853(a). Additionally, because MVPBS failed to demonstrate on reconsideration that it was recognized as a nonprofit entity under the laws of Massachusetts when the application was filed, any further attempt to satisfy this requirement would be fruitless. See *Hope Radio of Rolla, Inc.*, Letter, 22 FCC Rcd 4833 (MB 2007) (rejecting argument that dismissed LPFM applicant was an unincorporated association prior to filing its application where applicant failed to show it was recognized as such an entity), *aff'd* Memorandum Opinion and Order, 28 FCC Rcd 7754 (2013) (rejecting applicant's attempts to show on review that its activities satisfied the requirements for an unincorporated association where it had failed provide documentation on reconsideration). Cf. *M&M Community Development, Inc.*, Letter, 21 FCC Rcd 7983 (MB 2006) (dismissed LPFM application reinstated when applicant provided documentation on reconsideration showing that it was recognized under state law as an unincorporated association when the application was filed).

**Conclusion/Actions.** Accordingly, for the reasons set forth above, IT IS ORDERED THAT the Petition for Reconsideration filed on August 28, 2014, IS DENIED, and the September 4, 2014, Petition for Reconsideration IS DISMISSED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by two initials "HH". The signature is written in a cursive style.

Peter H. Doyle  
Chief, Audio Division  
Media Bureau