



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

January 8, 2015

In Reply Refer To:
1800B3-ATS

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Mr. Ralph Bolger
3740 SW Western Boulevard
Corvallis, OR 97333

In re: LPFM MX Group 289

Veterans for Peace, Chapter 132
New LPFM, Corvallis, Oregon
Facility ID Number: 197044
File Number: BNPL-20131114AXC

OHOP
New LPFM, Albany, Oregon
Facility ID Number: 195712
File Number: BNPL-20131112CGX

Petition to Deny

Dear Counsel and Mr. Bolger:

We have before us: 1) the application of Veterans for Peace, Chapter 132 (“VFP”), for a new LPFM station at Corvallis, Oregon (“VFP Application”); 2) the Petition to Deny the VFP Application filed by OHOP (“Petition”); and 3) the application of OHOP for a new LPFM station at Albany, Oregon (“OHOP Application”).¹ For the reasons set forth below, we deny the Petition, grant the VFP Application, and dismiss the OHOP Application.²

Background. VFP and OHOP filed their respective applications during the October 2013 LPFM filing window. The Bureau determined that the two applications were mutually exclusive and identified them as LPFM MX Group 289.³ The VFP Application indicated that the organization was a local chapter

¹ OHOP filed the Petition on August 8, 2014, and filed a revised Petition to Deny on August 11, 2014, which included a page missing in the August 8th filing. VFP filed an Opposition on August 22, 2014, and filed a revised Opposition on August 25, 2014, which included a page missing in the August 22, 2014, filing. On September 8, 2014, OHOP submitted a filing requesting an extension of the filing deadline for a Reply until September 19, 2014. No Reply has been filed.

² We also have the Informal Objection to the OHOP Application filed by Eads Broadcasting Corporation (“Eads Objection”) on January 24, 2014. Because we are dismissing the OHOP Application, we will dismiss the Eads Objection as moot. We also note that the State of Oregon administratively dissolved OHOP as of November 28, 2014. Because we are granting the VFP Application and dismissing the OHOP Application, we need not address the impact of OHOP’s dissolution or OHOP’s failure to report the dissolution in an amendment. *See* 47 C.F.R. § 1.65(a).

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).

of Veterans for Peace, which is incorporated in Missouri, and that both the local chapter and the national organization are recognized by the Internal Revenue Service (“IRS”) as 501(c)(3) non-profit organizations.⁴ VFP also provided a printout of the website of the Oregon Secretary of State Corporation Division showing that it is registered with the state as an “assumed business name.”⁵ On July 19, 2014, the Commission issued a Public Notice in which it identified the VFP Application as the tentative selectee of LPFM MX Group 289, began a 30-day period for filing petitions to deny against the VFP Application, and allowed both applicants the opportunity to file major change amendments to their applications to resolve their mutual exclusivities.⁶

In the Petition, OHOP argues that the VFP Application should be denied because: 1) VFP has not established that it was a nonprofit entity at the time it filed the VFP Application; and 2) VFP lacked reasonable assurance of site availability. OHOP argues that because VFP is organized as an “assumed business name” it has not demonstrated that it is a nonprofit entity.⁷ OHOP further states that its representative, Jessica Miller, contacted the owner of the tower site identified by VFP, which is owned by Corvallis Self Store, and that the store manager, Barbara Redinger, stated that she had not been contacted by VFP about its proposed transmitter.⁸ OHOP also states that it obtained the contact information for the owner of Corvallis Self Store, Craig Petre, who also indicated he had not been contacted by VFP.⁹

In the Opposition, VFP argues that: 1) it did have assurance that it could use the tower at the coordinates identified; and 2) it is a non-profit organization. VFP provides a letter dated November 5, 2013, from American Tower Corporation (“ATC”), which states that that the tower at the coordinates identified in the VFP Application is owned by ATC, that there was space on the tower, and that ATC would be willing to lease that space to VFP.¹⁰ VFP also states that it provided documentation with the VFP Application showing that it is recognized by the State of Oregon, and provides a printout showing that it is recognized by the IRS as a 501(c)(3) entity.¹¹

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.¹² OHOP has not met this burden.

Eligibility. The Commission’s Rules provide that an LPFM station may be licensed to a nonprofit educational organization for the advancement of an educational program.¹³ An applicant “must

⁴ VFP Application at Exhibit 2.

⁵ *Id.* at Attachment 10.

⁶ *Commission Identifies Tentative Selectees in 79 Groups of Mutually Exclusive Applications filed in the LPFM Window*, Public Notice, 29 FCC Rcd 8665 (2014). The Commission further indicated that non-tentative selectee applications would be dismissed once the tentative selectees’ application had been granted. *Id.* at 8670.

⁷ *Id.* at 2.

⁸ Petition at 3 and Attachment 3 (“Miller Declaration”).

⁹ *Id.*

¹⁰ Opposition at 1 and Attachment 1A (“ATC Letter”).

¹¹ *Id.* at 1-2 and Attachment 2B.

¹² 47 U.S.C. § 309(d).

¹³ 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)].”).

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.¹⁴ OHOP's argument that VFP is not recognized as a nonprofit rests entirely on its belief that an entity registered as an "assumed business name" is not recognized as a nonprofit entity.¹⁵ However, VFP is a chapter of Veterans for Peace, which is recognized as a nonprofit entity registered in the State of Missouri,¹⁶ and VFP itself has been recognized by the State of Oregon since 2010. Finally, although we have never required that a noncommercial applicant demonstrate that it has obtained 501(c)(3) status from the IRS, we find that IRS recognition of VFP as a nonprofit entity since 2008 – independent of Veterans for Peace – removes any doubt whether VFP is a nonprofit entity. Accordingly, we find that VFP was recognized by the State of Oregon as a nonprofit when it filed the VFP Application, and thus met the eligibility requirement set forth in Section 73.853(a) of the Rules.¹⁷

Site Availability. It is well established that the specification of a transmitter site in an application is an implied representation that the applicant has obtained reasonable assurance that the site will be available.¹⁸ While some latitude is afforded such "reasonable assurance," there must be, at a minimum, a "meeting of the minds resulting in some firm understanding as to the site's availability."¹⁹ We find that VFP has sufficiently demonstrated that it obtained reasonable site assurance. OHOP does not support its allegation with any declarations from Redinger and Petre, nor does it establish that they necessarily would know of any site availability discussion for the tower specified in the VFP Application. Additionally, the Miller Declaration contains hearsay²⁰ and its veracity is questionable since Miller is the sole director of OHOP.²¹ On the other hand, the ATC Letter – dated before the filing of the VFP Application – specifically states that ATC was willing to enter into lease negotiations for tower space. This indicates that the tower VFP identified is available for the construction and operation of VFP's proposed LPFM station.

¹⁴ Instructions to FCC Form 318, Section II, Question 2, Subsections 2(a).

¹⁵ We note that Oregon law provides that nonprofits may in fact register under assumed business names in the state. See Or. Rev. Stat. § 648.005.

¹⁶ See <https://bsd.sos.mo.gov/BusinessEntity/BusinessEntityDetail.aspx?page=beSearch&ID=458009>.

¹⁷ 47 C.F.R. § 73.853(a).

¹⁸ See, e.g., *William F. Wallace and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d 1424, 1427 (1974) ("Some indication by the property owner that he is favorably disposed toward making an arrangement is necessary.").

¹⁹ *Genesee Communications, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 3595 (1988). The applicant need not own the proposed site and may even work out the final details for a lease sometime in the future. The "reasonable assurance" standard is satisfied by "[s]ome clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated . . ." *Elijah Broadcasting Corp.*, Memorandum Opinion and Order, 5 FCC Rcd 5350, 5351 (1990).

²⁰ The Commission has found accounts of conversations with third parties to be inadmissible hearsay. See, e.g., *Living Proof, Inc. Big Pine, California*, Letter, 24 FCC Rcd 2382, 2385, n.29 (MB 2009) (declining to credit hearsay statements of third party). The weight to be accorded to a hearsay statement depends on its truthfulness, reasonableness, and credibility (*Johnson v. United States*, 628 F.2d 187, 190-191 (D.C. Cir. 1980)).

²¹ See, e.g., *Iglesia Jesucristo Es Mi Refugio, Inc.*, Memorandum Opinion Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 16310, 16319 (MB 2010) (petitioner's engineering consultant's hearsay statement, uncorroborated by independent documentation, should be given little weight because he was not a disinterested witness); *Second Samoan Congregation Church*, Letter, 23 FCC Rcd 16630, 16636 (MB 2008) (applicant's counsel's statements should be given little weight because he is not a disinterested witness).

Conclusion. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Petition to Deny filed by OHOP on August 8, 2014, IS DENIED.

IT IS FURTHER ORDERED, that the Informal Objection filed by Eads Broadcasting Corporation on January 24, 2014, IS DISMISSED as moot.

IT IS FURTHER ORDERED, that the application of OHOP (BNPL-20131112CGX) for a new LPFM station at Albany, Oregon, IS DISMISSED.

IT IS FURTHER ORDERED, that the application of Veterans for Peace, Chapter 132 (BNPL-20131114AXC) for a new LPFM station at Corvallis, Oregon, IS GRANTED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by the initials "PH" to the right.

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: OHOP
Eads Broadcasting Corporation