



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

March 6, 2015

In Reply Refer To:
1800B3-ATS

Mr. Mark Carr
7th Day Church of God
Box 70635
Knoxville, TN 37938

Ms. Margo Miller
Appalachian Community Fund
507 S. Gay Street, Suite 1120
Knoxville, TN 37902

Mr. William Isom
The Neighborhood Center
800 N. Fourth Avenue
Knoxville, TN 37917

Mr. Ian McCabe
United Mountain Defense
Box 1921
Knoxville, TN 37901

In re: LPFM MX Group 324

7th Day Church of God
New LPFM, Knoxville, Tennessee
Facility ID Number: 193197
File Number: BNPL-20131112BJG

Appalachia Community Fund
New LPFM, Knoxville, Tennessee
Facility ID Number: 195465
File Number: BNPL-20131113AFH

The Neighborhood Center
New LPFM, Knoxville, Tennessee
Facility ID Number: 195161
File Number: BNPL-20131115AHG

United Mountain Defense
New LPFM, Knoxville, Tennessee
Facility ID Number: 193062
File Number: BNPL-20131112BGO

Informal Objection

Dear Mr. Carr, Ms. Miller, Mr. Isom and Mr. McCabe:

We have before us: 1) the above-referenced applications of United Mountain Defense (“UMD”), The Neighborhood Center (“TNC”), and Appalachia Community Fund (“ACF”) (collectively, “Knoxville Applicants”) for new LPFM stations Knoxville, Tennessee (respectively, “UMD Application,” “TNC Application,” and “ACF Application;” collectively, “Knoxville Applications”); 2) the Informal Objection (“Objection”) to the Knoxville Applications filed by 7th Day Church of God (“7th Day”);¹ 3) the application of 7th Day for a new LPFM station at Knoxville, Tennessee (“7th Day Application”); and 4) the time-share agreement jointly filed by the Knoxville Applications (“Agreement”). For the reasons set forth below, we: 1) deny the Objection; 2) approve the Agreement; 3) grant the Knoxville Applications; and 4) dismiss the 7th Day Application.²

Background. The above-referenced applications were filed during the October 2013 LPFM filing window. The Bureau determined that the four applications were mutually exclusive and identified them as LPFM MX Group 324.³ On September 5, 2014, the Bureau identified all four applications as tentative selectees of LPFM MX Group 324 on a time-share basis, began a 30-day period for filing petitions to deny against the applications, and began 90-day periods in which the applicants could file time-share agreements or major change amendments in order to resolve their mutual exclusivities.⁴

In the Objection, 7th Day argues that the Knoxville Applicants colluded in filing their applications in an attempt to combine their comparative system points.⁵ It notes that the three Knoxville Applications propose the same transmitter site, main studio location, and identical technical specifications, and that all three applications were prepared by Prometheus Radio Project.⁶ 7th Day also argues that the Knoxville Applicants are not local because the phone number for the Main Studio is not a local number.⁷ Finally, 7th Day argues that the second-adjacent waiver request with regard to Station WIMZ-FM, Knoxville, Tennessee, submitted by the Knoxville Applicants is defective because it will cause interference to listeners of the station.⁸

7th Day also raises specific allegations against each Knoxville Application. First, it states that UMD is a newspaper publisher in Knoxville.⁹ Next, it argues that although TNC claims it has had an established community presence since July 15, 1969, the documentation it provides indicates that it was

¹ 7th Day filed the Objection on October 6, 2014. TNC filed an Opposition on November 5, 2014 (“TNC Opposition”). ACF filed an Opposition on November 7, 2014 (“ACF Opposition”). UMD filed an Opposition on November 13, 2014 (“UMD Opposition”). No reply was filed to the oppositions.

² We also have a Petition to Deny filed by Frank Callo on October 3, 2014, and an Informal Objection filed by Michael Jeffrey Bock on October 7, 2014, both seeking dismissal of the 7th Day Application. Because we are dismissing the 7th Day Application, we need not consider these pleadings or the related responsive pleadings.

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).

⁴ *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) (“September Public Notice”).

⁵ Objection at 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 2, 4.

⁹ *Id.* at 2.

only incorporated on October 11, 2011.¹⁰ 7th Day also states that the TNC Application lists the same address for six out of its eight board members.¹¹ Finally, 7th Day argues that AFC is not eligible to hold an LPFM license because: i) only one of its 11 board members resides within 20 miles of the transmitter site; and ii) AFC's local address "appears to be a drop box for some 58 other nonprofit groups and there is no campus associated with the location."¹² 7th Day also argues that AFC "is a funding group and not an educational institution."¹³

The UMD Opposition states that is not a newspaper publisher because it has "published 6 papers in 10 years of our existence . . . Our paper is not daily, or weekly, or even yearly. It clearly does not fit 'i.e., a daily newspaper of general circulation.'"¹⁴ Accordingly, UMD states that a grant of the UMD Application would not violate the Commission's cross-ownership rules.¹⁵

The TNC Opposition argues that there is no rule prohibiting LPFM applicants from sharing facilities, and notes that Prometheus helped TNC and many other organizations that filed during the 2013 filing window, but that there was no collusion among those applicants.¹⁶ TNC also states that its center has been used since 1969, but that it has amended its application to reflect that it was only formally incorporated on October 13, 2011.¹⁷ TMC further states that it used the address of its center for the address of its board members, but that it has amended its application to provide its board members' residences.¹⁸ TMC states that it provided a mobile phone for its studio because the studio has not been built yet.¹⁹ Finally, TMC states its second-adjacent waiver request "is perfect" and that 7th Day's analysis of the waiver request is incorrect because it misidentifies the proposed transmitter site.²⁰

The ACF Opposition states that it satisfies the localism requirements of the LPFM service because its office is located "right underneath the transmitter site" and has had an office in Knoxville for decades.²¹ ACF further states that it is not a "dropbox" but instead serves as a source of funds for other organizations.²² ACF provides photographs of its office to show that it does have a presence at the address it provided.²³

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ UMD Opposition at 2.

¹⁵ *Id.*

¹⁶ TNC Opposition at 2, 4.

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 5. TNC filed this amendment on November 5, 2014.

¹⁹ *Id.* at 4-6, 9

²⁰ *Id.* at 6, 9-10

²¹ ACF Opposition at 2-3.

²² *Id.* at 3.

²³ *Id.* at Exhibit 1.

After the filing of the Objection, on December 4, 2015, the Knoxville Applicants filed the Agreement, aggregating their points for a total of 15 points.²⁴

Discussion. Pursuant to Section 309(d) of the Communications Act of 1934, as amended, informal objections, like 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.²⁵ 7th Day has not met this burden and we will deny the Objection.

Allegations of Collusion. 7th Day has not demonstrated that the Knoxville Applicants violated any of the Commission's Rules ("Rules"). There is no rule prohibiting applicants from sharing a studio or transmitter site, nor is there a Rule prohibiting LPFM applicants from filing separate applications with the goal of arriving at a timeshare agreement, provided that each applicant remains under separate control and intends to construct and operate the proposed station if its application is granted. We note that each of the Knoxville Applicants has an independent corporate history and independent board, with no indicia that any of the Knoxville Applicants was established as a "front" for another entity.²⁶

UMD Application. Section 73.860(d) of the Rules prohibits cross-ownership of an LPFM station and any other media interest.²⁷ As noted in the Instructions to FCC Form 318, such media interests include "a daily newspaper of general circulation, a cable television system; or any full power AM or FM radio station, or full or low power television station".²⁸ 7th Day provides no evidence that UMD has violated this rule. Clearly, UMD's publication of six papers in ten years cannot be equated with publication of "a daily newspaper of general circulation." We thus reject 7th Day's argument.

TNC Application. TNC has amended its application to provide the residential address for its board members.²⁹ Additionally, even though TNC was not incorporated until October 11, 2011, it still

²⁴ The *September Public Notice* explained that tentative selectees may file time-share agreements to aggregate their points and break ties. See *September Public Notice*, 29 FCC Rcd at 10850. See also 47 C.F.R. § 73.872(c).

²⁵ 47 U.S.C. § 309(d); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987).

²⁶ In assessing the locus of control, the Commission examines who establishes an entity's basic operating policies with respect to programming, personnel, and finances. See *WGPR, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8140, 8142-46 (1995), *vacated on other grounds sub nom, Serafyn v. FCC*, 149 F.3d 1213 (D.C. Cir. 1998); *Choctaw Broadcasting Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 8534, 8538-39 (1997). Shared facilities do not necessarily indicate an abdication of control to the entity that owns or leases the facilities.

²⁷ 47 C.F.R. § 73.860(d).

²⁸ Instructions to FCC Form 318, Section II, Question 5(b).

²⁹ The Objection does not indicate what Rule TNC violated by not providing its board member's residential addresses, and FCC Form 318 (unlike certain other FCC Forms, such as FCC Form 340) does not explicitly require that LPFM applicants provide such information. However, residential addresses would be required if an LPFM applicant is relying on the residences of its board members to satisfy the eligibility requirements of Section 73.853(b)(2). See 47 C.F.R. § 73.853(b)(2). However, TNC's headquarters is within 20 miles of the proposed transmitter site. Thus, TNC meets the eligibility requirements of Section 73.853(b)(1). See 47 C.F.R. § 73.853(b)(1).

qualifies for two points as an established local applicant because it has been in existence for over two years prior to the filing of its application.³⁰ We thus find no reason to dismiss the TNC Application.

ACF Application. Section 73.853(b) provides that “[o]nly local organizations will be permitted to submit applications and to hold authorizations in the LPFM service” and states that an applicant may demonstrate localism by satisfying the following criteria:

(1) The applicant, its local chapter or branch is physically headquartered or has a campus within 16.1 km (10 miles) of the proposed site for the transmitting antenna for applicants in the top 50 urban markets, and 32.1 km (20 miles) for applicants outside of the top 50 urban markets;

(2) It has 75% of its board members residing within 16.1 km (10 miles) of the proposed site for the transmitting antenna for applicants in the top 50 urban markets, and 32.1 km (20 miles) for applicants outside of the top 50 urban markets . . .³¹

ACF’s headquarters is in the same building as the proposed transmitter site, and ACF has demonstrated that it actually maintains an office at this site. ACF has thus demonstrated that it is eligible to hold an LPFM license. We also reject 7th Day’s assertion that AFC is not an educational organization. AFC has provided a copy of its incorporation certificate from the State of Tennessee, its Articles of Incorporation, a letter from the Internal Revenue Service showing that it is a nonprofit entity, and a statement explaining how it would use its proposed station to advance its educational purpose.³² This is sufficient to demonstrate that ACF is eligible for an LPFM license.

Second Adjacent Waiver. 7th Day fails to demonstrate that grant of the Knoxville Applications would result in impermissible interference to WIMZ-FM. 7th Day alleges that the requested waiver of Section 73.807 with regard to WIMZ-FM should be denied because it will cause interference to people “located with the building and adjacent areas of the antenna site.”³³ However, a staff review of the proposed facility confirms the Knoxville Applicants’ claim that prohibited interference will not occur beyond about 14 meters from the antenna and will not reach any occupied areas of the nearby buildings. Therefore, the Knoxville Applications satisfy all applicable spacing and interference requirements for a waiver of Section 73.807.

Time-Share Agreement. As a result of the Agreement, the Knoxville Applicants have an aggregated 15 comparative points, thus breaking the four-way tie in LPFM MX Group 324 in those applicants’ favor. We have reviewed the Agreement and find that it meets the requirements of Section 73.872(c).³⁴ Accordingly, we will grant the Agreement and the Knoxville Applications, and dismiss the mutually exclusive 7th Day Application.

³⁰ 47 C.F.R. § 73.872(b)(1). TNC’s description of its pre-incorporation activities violated no Commission Rule or policy. TNC’s corporate charter was included in the TNC Application, so there could not have been any confusion over when TNC was incorporated.

³¹ 47 C.F.R §§ 73.853(b)(1); 73.853(b)(2). Sections 73.853(b)(3) and (4) provide for eligibility for public safety entities and Tribal Applicants, respectively.

³² ACF Application at Attachment 2.

³³ Objection at 4.

³⁴ See 47 C.F.R. § 73.872(c).

Conclusion. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Informal Objection filed by 7th Day Church of God on October 6, 2014, IS DENIED.

IT IS FURTHER ORDERED, that the time-share agreement filed on December 4, 2014, by United Mountain Defense, The Neighborhood Center, and Appalachia Community Fund IS APPROVED pursuant to 47 C.F.R. § 73.850(c)(1).

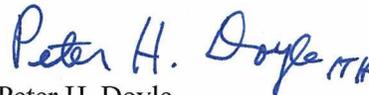
IT IS FURTHER ORDERED, that the application of United Mountain Defense (BNPL-20131112BGO) for a new LPFM station at Knoxville, Tennessee, IS GRANTED.

IT IS FURTHER ORDERED, that the application of The Neighborhood Center (BNPL-20131115AHG) for a new LPFM station at Knoxville, Tennessee, IS GRANTED.

IT IS FURTHER ORDERED, that the application of Appalachia Community Fund (BNPL-20131113AFH) for a new LPFM station at Knoxville, Tennessee, IS GRANTED.

IT IS FURTHER ORDERED, that the application of 7th Day Church of God (BNPL-20131112BJG) for a new LPFM station at Knoxville, Tennessee, IS DISMISSED.

Sincerely,

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

Peter H. Doyle
Chief, Audio Division
Media Bureau