



Federal Communications Commission
Washington, D.C. 20554

March 12, 2007

DA 07-1209

In Reply Refer to:
1800B3-JP

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Hope Radio of Rolla, Inc.
810 Highway O
Rolla, MO 65401

National Lawyers Guild Center
on Democratic Communications
1840 Woolsey Street
Berkeley, CA 94703

In re: Hope Radio of Rolla, Inc.
(NEW), Rolla, Missouri
Facility ID No. 132462
File No. BNPL-20010122AKZ

Petition for Reconsideration

Dear Sir or Madam:

We have before us a Petition for Reconsideration filed by Hope Radio of Rolla, Inc. ("HRR") seeking reconsideration of a staff action dismissing HRR's above-referenced application (the "Application") for a construction permit for a new low power FM ("LPFM") station in Rolla, Missouri. Also on file is an amendment to the Application, filed by HRR on July 24, 2006 (the "July 2006 Amendment"). For the reasons set forth below, the Petition for Reconsideration is denied.

Background. On January 22, 2001, HRR filed the Application, indicating therein that it was a "not-for-profit corporation organized under the laws of the state of Missouri in January 2001." The staff dismissed HRR's application on February 5, 2004, as inadvertently accepted for filing,¹ because the record reflected that HRR was not incorporated until February 15, 2001, almost one month after it filed the Application and made that representation. HRR then timely filed the Petition for Reconsideration on March 12, 2004.

Discussion. The Commission will consider a petition for reconsideration 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.² HRR's Petition alleges that the dismissal of the original application was in error because it is too narrowly drawn and contrary to Commission precedent regarding the issue of corporate existence. Furthermore, in its July 2006 Amendment, HRR states that, when it filed the Application, it was in fact an unincorporated association recognized under Missouri law.

¹ Letter to Alan Korn, Esq. and Donald Martin, Esq., Reference 1800B3-SW (MB Feb. 5, 2004) ("Letter Decision"). Additionally, National Lawyers Guild Center on Democratic Communications filed an Informal Objection to the Application on September 23, 2003.

² 47 C.F.R. § 1.106. 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).

An LPFM applicant must certify its eligibility to hold the Commission authorization for its proposed station at the time that it files its FCC Form 318 application.³ Because individuals are not eligible to own and operate LPFM stations, the certification in the application requires that the applicant be a noncommercial educational institution, corporation, or entity that is recognized under state law. Thus, an LPFM applicant must be incorporated, registered, or otherwise organized under the laws of the state in which it proposes to operate the proposed LPFM station at the time its application is submitted.⁴ Additionally, FCC Form 318, Section II, Question 2, requires corporate applicants to provide an exhibit with the state and date of their incorporation. The instruction to FCC Form 318, Section II, Question 2, Subsection 2(b) regarding non-profit educational organizations requires that “[a]pplicants must be prepared to furnish supporting documentation for their statements upon request by the Commission staff.” Such documentation may, for example, include a letter signed by a local attorney licensed to practice in the state where the applicant proposes to operate, the citation and text of a state statute permitting unincorporated entities, or any other official documentation showing the applicant’s existence as a separate legal entity.

Although HRR indicated in the Application that it was a “not-for-profit corporation organized under the laws of the state of Missouri in January 2001,” a September 23, 2003, Informal Objection by the National Lawyers Guild Center on Democratic Communications provided evidence that HRR was not incorporated until February 15, 2001, almost one month after it filed the Application containing that representation. The staff investigated this claim and discovered that the Missouri Secretary of State database of corporations shows that HRR was not, in fact, incorporated until February 15, 2001.⁵ Therefore, the staff dismissed HRR’s Application because HRR was not incorporated at the time of its Application. HRR subsequently filed the July 2006 Amendment asserting that “the applicant first operated as an unincorporated association, with the officers named in the application. The association was organized and began planning and preparing its application for the new LPFM station in November, 2000.”⁶ HRR has made no attempt to show that HRR’s organization and planning activities prior to the filing of its application satisfied unincorporated association requirements under Missouri state law.⁷

Furthermore, we reject HRR’s contention that the dismissal of its Application due to its lack of corporate qualifications is contrary to Commission precedent on the issue of corporate existence. Although the Commission generally will not deny an application for a *commercial* broadcast facility based on an applicant’s, licensee’s, or permittee’s non-compliance with state corporate law “when no challenge has been made in the state courts and the determination is one that is more appropriately a matter of state resolution,”⁸ a corporation’s existence can be a Commission inquiry relevant with respect to

³ See Instructions for FCC Form 318, Section II, Question 2. See also FCC Form 318, Section II, Question 2.

⁴ *Id.* at paragraphs 18 and 19. See also Section 397(6)(A) of the Communications Act of 1934, as amended (the “Act”). 47 U.S.C. § 397(6)(A).

⁵ Missouri Secretary of State website, www.sos.mo.gov/BusinessEntity/soskb/csearch.asp, cited in Letter Decision at 2.

⁶ File No. BNPL-20010122AKZ, Exhibit 2.

⁷ MO. ANN. STAT. § 355.066.

⁸ See *Abundant Life, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 4972, 4973 (2001).

LPFM applicants. Such inquiry is crucial to determining an applicant's qualification to be an LPFM licensee.⁹ The LPFM service is a noncommercial educational service, and as such, Section 397(6) of the Communications Act of 1934, as amended, requires that a licensee be a public agency or non-profit private foundation, corporation, or association. The rules and application instructions described above clearly require an LPFM applicant to be organized in a form recognized by the laws of the state in which it proposes to operate at the time of application.

HRR has not shown that it was organized in a form recognized by Missouri state law when it filed its Application on January 22, 2001. Therefore, the staff properly dismissed the Application. HRR's Petition for Reconsideration has failed to show a material error or omission in that dismissal and did not raise additional facts unknown or not existing until after HRR's last opportunity to present such matters and will be denied.¹⁰

Conclusion/Actions. For the above stated reasons, the Petition for Reconsideration filed by Hope Radio of Rolla, Inc. is DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Donald Martin, Esq.
Alan Korn, Esq.

⁹ See *Blue Lake Academy, Inc.*, Letter Decision, 20 FCC Rcd 12066, 12068-69 (MB 2005).

¹⁰ See *Infinity Broadcasting Operations, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 4216 (2004).