



DEPARTMENT OF JUSTICE
CIVIL ENFORCEMENT DIVISION

June 2, 2015

Chairman Thomas Wheeler
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Mr. Wheeler:

The purpose of this letter is to bring information to your attention regarding several organizations that applied for Low Power FM (LPFM) radio licenses. The applications in question are all associated with a Robert Lund, who has stated that he has acted as consultant for the applicants. Based upon the face of the applications, the entities at issue were not formed or operated in conformance with Oregon law at the time of their applications. Furthermore, many of the applications on which Mr. Lund is identified as a contact person share similarities that indicate that Mr. Lund has considerable influence over the applicants that extends beyond providing technical assistance, as described in more detail below.

Mr. Lund submitted LPFM licenses on behalf of at least 20 Oregon nonprofit corporations that were incorporated shortly before the FCC license applications were submitted. This letter refers to these entities collectively as the "Lund Corporations" because of the corporations' association with Robert Lund. Each of the Lund Corporation applications included articles of incorporation that identified the corporations as Oregon nonprofit public benefit corporations.

Each of the Lund Corporations was, in fact, incorporated as an Oregon nonprofit public benefit corporation shortly before the LPFM applications were filed. In fact, all of the corporations were incorporated between September and November 2013. Not all of the Lund Corporations listed below may be continuing to pursue their LPFM licenses. A number have been administratively dissolved and have not renewed their corporate status with the Oregon Secretary of State. However, we list them in the event that the similarities in the applications and subsequent events may be relevant to the issue of the nature of Mr. Lund's relationship to the applications.

The fifteen applications listed below purported to have a single director with 100% of the voting control over the corporation.¹

¹ Five Lund Corporation applications reported having at least three directors: Christian Youth Promotion and Advancement, Corvallian Waves, East Linn County Christian Foundation, Green Peter Eclectic Tunez, and Young American Promotion and Preservation. The LPFM application for Christian Youth Promotion and Advancement was withdrawn. The LPFM application for Corvallian Waves was dismissed due to an attributed interest issue. Those listed as "directors" for the East Linn County Christian Foundation had no knowledge of their inclusion or of the LPFM application, have not renewed their state corporate registration and remain administratively dissolved. While these five applications do not share the same defect in the stated number of directors as the fifteen identified above, there still may be issues as to whether these corporations have acted independently from Robert Lund or

A Home for Everyone
A Life Worth Sustaining
All About Children
Blue Stone Media Activists
Cascadia Sound Waves
Central Oregon Spiritual Awareness Advocates
Futuristic Prophetic Advancement
Health Freedom For All
OHOP (Oregon House of Prayer)
Seal Rock Community Arts Consortium
Second Chance Ministry
Sweet Home All for One and One for All
Sweet Home House of Prayer
The Bride of Christ As One
You Matter

The 15 applications identified above are facially defective because Oregon nonprofit public benefit corporation must have at least three persons serving as directors in order to operate. While a single person may incorporate a nonprofit, before a public benefit corporation can engage in activities or operations, including activities such as filing applications on behalf of the corporations or entering into contracts, at least three persons must be elected or designated to serve as directors of the corporation.

Pursuant to ORS 65.301(1) and (2), a nonprofit corporation is required to have a board of directors that directs the affairs of the corporation. Per Oregon Revised Statutes (ORS) 65.307(1), “a board of directors must consist of one or more individuals for a mutual benefit or religious corporation **and three or more individuals for a public benefit corporation. . .**” (emphasis added). It is evident from the LPFM applications that the above Lund Corporations did not have the necessary board of directors in place to act on behalf of the corporation at the time of filing a license application. In their LPFM applications, each of the above corporations states they are public benefit corporations, but also claim to be controlled by a board consisting of a single director, with 100% of the voting control over the organization. This is not consistent with the requirements of ORS 65.307(1).

If the initial directors are not named in the articles, and they were not in the case of the Lund Corporations, the organization of the corporation is not complete until there is an organizational meeting called for by the incorporator at which the initial slate of directors is elected. ORS 65.057. Since no organizational meeting was held to elect the necessary minimum of three directors, the organization of the Lund Corporations was never properly completed.

whether they improperly identified themselves in their applications as public benefit corporations when they later claimed to be religious corporations.

All 20 of the Lund Corporations subsequently filed Articles of Amendment with the Secretary of State, purportedly reflecting each corporation's independent decision to amend its articles of incorporation to convert from a public benefit to a religious corporation. The articles of amendment were filed only after our office notified four of the Lund Corporations that, as public benefit corporations, they were subject to this office's registration and reporting requirements.² Although we notified only four of the Lund Corporations of these requirements, all Lund Corporations subsequently filed virtually identical articles of amendment on the same day with the Oregon Secretary of State, purporting to change from public benefit to religious corporations. They each claimed that the amendment was adopted by the board of directors one day after filing initial articles of incorporation as public benefit corporations, although each failed to file the articles reflecting that conversion in a timely manner. Instead, the amended articles for the twenty different corporations were all filed on Sept. 23, 2014, well after the decisions to convert were purportedly made.

The purported amendments should not be viewed as curing the defects in the structure of the Lund Corporations or their FCC LPFM applications. While religious organizations may lawfully operate with a single director, the decision of a public benefit corporation to convert to a religious corporation would require the majority vote of at least two of three directors. The Lund Corporations do not appear to have ever had a three-person board in place capable of authorizing conversion to a religious corporation.³ Even assuming that the Lund Corporations properly converted to religious corporations capable of operating with a single director, the FCC applications should be rejected for failing to properly describe the corporations and failing to provide the appropriate amended articles of incorporation at the time of their applications. If the Lund Corporation directors had in fact voted to convert to religious corporations prior to filing their FCC applications, then the filed applications were erroneous and inconsistent in claiming that the applicants were public benefit corporations.

It also appears that Mr. Lund's involvement with these corporations extends beyond that of an adviser or consultant, as described in more detail below. Possibly, given their shell-like nature, the Lund Corporations may have been formed to circumvent FCC licensing restrictions limiting the ability of persons to have an interest in more than one license.

² On September 16, 2014, this office sent notifications concerning registration requirements to the following four entities: Blue Stone Media Activists, Cascadia Sound Waves, OHOP, and You Matter! Three of the notifications were sent to Robert Lund as registered agent and one was sent to Sonya McKendree-Brown, the registered agent for Cascadia Sound Waves. On September 23, 2014, Articles of Amendment were filed with the Oregon Secretary of State for these four entities and every other Lund Corporation, purporting to convert them from public benefit to religious corporations. Each of the Articles of Amendment includes a statement indicating the amendment was adopted one day after the respective non-profit corporation's original incorporation date. While some of the Lund Corporations appear to have religious purposes, over half of them do not including Young American Promotion and Preservation and Green Peter Eclectic Tunez according to their own LPFM application Purpose Statements.

³ The Lund Corporations filed Articles of Amendment, as opposed to Articles of Correction allowed under ORS 65.014. This indicates that the decision to incorporate as public benefit corporations was deliberate and not a mistake, despite the purported decision to change corporate form one day after incorporating. The articles of incorporation are required to designate whether the corporation is one of three types: a public benefit corporation, a mutual benefit corporation, or a religious corporation. ORS 65.047(1)(b).

It is beyond the bounds of credibility that 20 independent corporations would all decide to incorporate as public benefit corporations, all decide to convert to religious organizations a day later, all apply for LPFM licenses, all neglect to inform the FCC that they were religious corporations in their applications, all neglect to file the appropriate amendments in a timely manner, and then all file amended articles on the exact same day nearly a year later. The obvious explanation is that the entities at issue are effectively controlled by Robert Lund and that he orchestrated these activities.

This explanation is consistent with information this office obtained in our interviews of several persons identified as the corporate director for a number of the Lund Corporations. They indicated that Robert Lund initiated the discussion regarding LPFM licenses and forming nonprofit corporations to obtain such licenses. Lund prepared the articles of incorporation for each entity, secured the respective nominal key person's signature on each of the respective articles, and filed the articles of incorporation with the Oregon Secretary of State for each entity. The nominal directors we interviewed indicated that they did not pay the corporate filing fees. In at least one instance, the nominal director did not even know an LPFM radio station license application had been filed on behalf of the corporation with which she is associated until after being notified that the license had been granted.

Each of the nominal incorporators/directors who agreed to be interviewed during our investigation knew very little about their respective nonprofit organizations, conducted no meetings, and kept no minutes. They have done nothing with or on behalf of their respective corporations. Each indicated that "Bob" [Mr. Lund] is responsible for the corporations' operations. In general, the incorporators/directors with whom we spoke did not express an understanding of the responsibilities of managing a nonprofit organization or a radio station and did not appear to be in a position to obtain the financing necessary to accomplish the nonprofit's stated objectives.

Directors of some of the Lund Corporations live or have lived in the same trailer park located in Sweet Home, Oregon. Mr. Lund has an ownership interest in all but one or two of the trailers in that park and, thus, in essence, was the landlord of a number of "applicants." For example, Sonya McKendree, the Director of Cascadia Sound Waves, is the manager of the trailer park. Her daughter Leanna McKendree, the Director of Blue Stone Media Activists, is the assistant manager of the trailer park. Some of the listed directors have moved from those trailers since the time of incorporation and FCC application. Directors of other Lund Corporations appear to be related to Mr. Lund.

All of the Lund Corporations came into existence shortly before the LPFM license applications were filed. Within days of incorporating, Lund filed the LPFM applications. In four instances the public benefit corporation was registered the day before the FCC LPFM license application window closed on November 14, 2013.

With the exception of the Articles of Amendment signed by Lund's wife, Colleen, the signatures on the Articles of Amendment generally look markedly different from the respective signature on the corporation's original Articles of Incorporation, despite the fact that both documents were

purportedly signed by the same person. Four of the nominal incorporators/directors with whom DOJ staff spoke indicated that they did not sign the articles of amendment, despite the fact that the amended articles purported to bear their signature. Those same four incorporators/directors also stated that they had never seen the amendment form; they had never discussed the form with Robert Lund; Lund never contacted them about signing the form; Lund never asked for their authorization to sign the form on their behalf; and they did not make the decision to amend their respective corporate articles on the alleged dates or on any other dates. A fifth incorporator/director gave a similar statement during a telephone interview, but then subsequently indicated he has memory issues and believed it was possible he signed the form. He subsequently ceased further communications with this office.

There is also evidence to suggest that Robert Lund has provided financial support to the applicants in ways that may violate FCC regulations concerning attributable interests. All of the Articles of Incorporation filed by Robert Lund on behalf of the corporate applicants required a \$50.00 filing fee be paid to the Oregon Secretary of State's office. The applicants with whom this office spoke stated that none of them paid money to Lund for corporate filing fees. Their consistent testimony was that Mr. Lund handled everything related to the corporation and the FCC applications. The Articles of Incorporation reflect that for all entities incorporated before November 13, 2013, the filing fees were paid in cash. Given that at least some of the Lund Corporations' directors denied paying corporate filing fees, it would appear that Robert Lund made at least some of the required payments on behalf of the corporations. (The filing fees of entities that incorporated on November 13, 2013 were paid by check, but copies of those checks are not presently available to this office.)

In a statement Mr. Lund filed with the FCC, he acknowledged that he paid another consultant for assistance in developing others' applications. He also acknowledged that the applicants he was assisting knew "little to nothing about the technical matters of LPFM" and that Lund provided assistance with "nearly every aspect of the corporation filing and application process." This included assisting them with such fundamentals as the creation of educational goal statements. Mr. Lund appears to acknowledge that the people he has been assisting are unsophisticated and not familiar with either nonprofit corporations or operating radio stations. The applicants' lack of sophistication makes the degree of influence that Mr. Lund is likely to have over the corporations greater. It is possible to be a *de facto* director even if not named as such by the corporation.

The fact that a number of the Lund Corporations have been administratively dissolved for failing to renew their corporate status and have apparently abandoned their corporations and LPFM applications is further evidence that the directors of many of the Lund Corporations were not independently interested in operating a nonprofit or LPFM license but were allowing Mr. Lund to use the corporate entities formed in their name to pursue his own interests.

As further evidence of Mr. Lund's influence, all of the Lund Corporations' articles of incorporation state that upon dissolution the assets of the corporations will be distributed to other Lund Corporations, specifically Blue Stone Media Activists ("Blue Stone") and Cascadia Sound Waves ("Cascadia"). In the event then that Blue Stone dissolves, all of its assets would be

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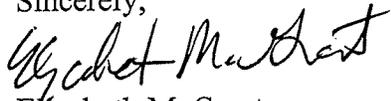
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distributed to Cascadia. In the event that Cascadia dissolves, all of its assets would be distributed to Blue Stone. This distribution scheme potentially concentrates the distribution of all LPFM assets to one corporation, either Blue Stone or Cascadia. If the directors of each Lund Corporation were acting independently, they likely would have designated more well-known charitable organizations with purposes more in keeping with their own missions. The only way that the other Lund Corporations would even be aware of Blue Stone or Cascadia is through Robert Lund. The assets of the Lund Corporations would include whatever interests they have arising from their LPFM applications and as indicated in their articles, those assets would flow to Blue Stone first and then to Cascadia upon dissolution. Depending on how the FCC defines attributable interest, Blue Stone Media Activists and Cascadia Sound Waves may have attributable interests in more than one license, particularly in light of the fact that a number of Lund Corporations are currently dissolved as reflected in the Oregon Secretary of State's records.

In conclusion, as indicated above, the LPFM applications of fifteen of the Lund Corporations are facially inconsistent with Oregon legal requirements in that the applications list only a single director when Oregon law requires public benefit corporations to have a least three directors. The evidence shows that these entities were non-conforming with Oregon state law when their respective FCC LPFM applications were submitted. Furthermore, there may be additional grounds for denying LPFM licenses to the Lund Corporations, including that they failed to provide the appropriate amended articles of incorporation at the time of their applications. There is also evidence to suggest the corporations are not being operated independently.

Thank you for your attention to these matters and please let me know if this office can be of additional assistance.

Sincerely,



Elizabeth M. Grant

Sr. Assistant Attorney General
Charitable Activities Section