

Section 73.858(b) concerns the attribution of broadcast interests held by a large organization to its local chapters that may seek to become LPFM licensees. The rule states that the broadcast interests of the larger organization will not be attributable to the local chapter if the local entity “is separately incorporated and has a distinct local presence and mission.” Section 73.860(a) prohibits LPFM licensees from holding attributable interests in other broadcast stations (aside from the two translator stations newly permitted under the Order). The aggregate effect of these two rules would appear to preclude any unincorporated local chapter from LPFM ownership if the larger parent organization has other broadcast interests.

The Media Bureau’s holding in *Montmorenci United Methodist Church*, 22 FCC Rcd. 11110 (MB 2007), *Application for Review pending*, appears to be in direct conflict with this conclusion. In that case, it was undisputed that the an LPFM applicant, local chapter of the larger national organization, was not separately incorporated. However, the Bureau found that it did possess a local purpose that could be distinguished from the national purpose of the larger parent organization. Broadcast interests attributable to the larger organization were not held to be attributable to this applicant as the unincorporated local chapter. While this result appears to be contrary to the black letter of the rules, LTR recommended in its Comments that the Commission amend the rules so that going forward, the processing of LPFM applicants would be consistent with the Bureau’s approach in the *Montmorenci* decision. This is a preferable policy because the boundary between a national organization and its local chapters is not necessarily contingent on the often artificial construct of whether or not the local entity is separately incorporated. The real test of whether an entity is local and has local purposes can be found in its roots and activities in the community.

It does not appear that the Commission responded to or addressed LTR's comments. Instead, the Commission created a bifurcated regulation about the attribution of the larger organization's broadcast interests to the local entity as an LPFM applicant. The Commission created a "New Entrant" comparative selection criterion under which an LPFM applicant will earn a comparative point if it has no other attributable broadcast interests. Order, at ¶191. The main purpose for this new comparative element apparently create a slight advantage for applicants competing with entities that qualify for exceptions to the prohibition on multiple ownership and cross ownership (such as Tribal Nations under news rules in the Order, and educational institutions with student-operated stations). However, another new category of applicants appears to fall under this attribution disadvantage in the comparative selection process. That would be the LPFM applicants that are local chapters of a national organization with other attributable interests. They will not be entitled to the point to be awarded for being a "new entrant" or for "diversity of ownership." Order, at ¶160. Rather than simplifying the situation for local chapter applicants, this new feature makes it more complex. Apparently, for a such an applicant, the national organization's broadcast interests are not attributable for purposes of §73.860, but would be attributable for purposes of the comparative analysis under the new §73.872(b)(5).

This is not sensible rulemaking. If a local chapter applicant is truly local and separate in purpose and control from its national organization, it should found to be qualified to be an LPFM licensee and should not be saddled with the burden of attribution of the national organization's attributable interests – interests with which it has no real connection. This is true regardless of whether the local entity is separately incorporated. If there is a real concern that granting an

LPFM license to such a local chapter would create an aggregation of media in the national organization that is detrimental to public policy, then the local entity is not truly separate and should not qualify as a local entity eligible for an LPFM license. The regulatory regime for this aspect of LPFM policy established in the Order is internally inconsistent and incoherent.

LTR urges the Commission adopt a scheme that can find LPFM applicants that are local chapters to have truly separate and local purposes distinguishable from the larger organization regardless of corporate structure, and to remove the comparative burden from such applicants that they would incur if they must assume the attributable broadcast interests of the national organization.

Respectfully submitted

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