



Federal Communications Commission  
Washington, D.C. 20554

September 12, 2022

DA 22-939  
*In Reply Refer to:*  
1800B3-ARR  
Released September 12, 2022

Free Radio Santa Nella  
c/o Mr. Rob Roy  
4231 Myrtle Ave.  
Sacramento, CA 95841  
(sent by electronic mail to: [RobAlexRoy@gmail.com](mailto:RobAlexRoy@gmail.com))

Albert Adam David  
2632 Kenilworth Ave.  
Berwyn, IL 60402  
(sent by electronic mail to: [albert.a.david@hotmail.com](mailto:albert.a.david@hotmail.com))

Ondas de Vida, Inc.  
c/o Mr. Jeffrey D. Southmayd, Esq.  
4 Ocean Ridge Blvd S  
Palm Coast, FL 32137  
(sent by electronic mail to: [JDSOUTHMAYD@MSN.COM](mailto:JDSOUTHMAYD@MSN.COM))

In re: **NCE MX Group 28**

**Free Radio Santa Nella**  
New NCE, Santa Nella, California  
Facility ID No. 766527  
Application File No. 0000167151

**Ondas de Vida, Inc.**  
New NCE, Volta, California  
Facility ID No. 768252  
Application File No. 0000167248

**Informal Objection**

Dear Applicant and Objector,

We have before us two mutually exclusive (MX) applications filed by Free Radio Santa Nella (FRSN) and Ondas de Vida, Inc. (OV) for construction permits for new noncommercial educational (NCE) FM stations in different communities in California, which the Media Bureau (Bureau) designated

as NCE MX Group 28.<sup>1</sup> The Commission identified the FRSN Application as the tentative selectee of the group.<sup>2</sup> We also have before us an Informal Objection (Objection) to the FRSN Application, filed by Albert Adam David (David)<sup>3</sup> and a related responsive pleading.<sup>4</sup> For the reasons set forth below, we deny the Objection, grant the FRSN Application, and dismiss the OV Application.<sup>5</sup>

*Background.* The subject applications were filed during the November 2021, NCE FM filing window.<sup>6</sup> In the *First Comparative Order*, the Commission conducted a fair distribution analysis pursuant to section 307(b) of the Communications Act of 1934, as amended (Act),<sup>7</sup> determined that the FRSN and OV Applications were eligible for a fair distribution preference based on first NCE service population totals, but determined that the applications were comparable because neither proposal exceeded the other by at least 5,000 people.<sup>8</sup> Accordingly, FRSN and OV proceeded to a point system analysis, and the Commission identified FRSN as the tentative selectee pursuant to the point and subsequent tie-breaker analyses.<sup>9</sup>

In the Objection, David argues the FRSN Application should be dismissed because its proposed antenna radiation pattern varies more than 2 dB per 10 degrees of azimuth, between the 340 and 350 degree radials, in violation of section 73.316(b)(2) of the Commission's rules (rules).<sup>10</sup> David further argues that because the proposed antenna pattern affects the FRSN Application's population and area data, it should no longer be the tentative selectee.<sup>11</sup>

---

<sup>1</sup> *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations; Opens Window to Accept Settlements and Technical Amendments*, MB Docket No. 20-343, Public Notice, DA 21-1476 (MB Nov. 29, 2021); *see also* Application File Nos. 0000167151 (FRSN Application), 0000167248 (OV Application).

<sup>2</sup> *Comparative Consideration of 27 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 22-61 at 8-9, paras. 22-24 (Aug. 2, 2022) (*First Comparative Order*).

<sup>3</sup> Pleading File No. 0000197193 (filed Aug. 8, 2022). David filed a Supplement to the Objection, Pleading File No. 0000197252 (filed Aug. 9, 2022), to correct the referenced proposed channel.

<sup>4</sup> FRSN filed an Opposition to the Objection, Pleading File No. 0000197392 (filed Aug. 10, 2022). As of the date of this release, David has not filed a Reply to the Opposition.

<sup>5</sup> In the *First Comparative Order*, the Commission directed Bureau staff to "consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of the tentatively selected application would serve the public interest." *First Comparative Order* at 25, para. 86. The Commission delegated authority to the Bureau staff "to act on any routine matter that may be raised, including whether the applicant is eligible, as certified, for the points awarded herein, and whether the application complies with all relevant Commission rules and policies." *Id.* at 25, para. 87.

<sup>6</sup> *Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB 2021).

<sup>7</sup> *See First Comparative Order* at 2-8, paras. 3-19.

<sup>8</sup> *Id.* at 8-9, para. 22.

<sup>9</sup> *Id.* at 9, paras. 23-24.

<sup>10</sup> Objection at 1.

<sup>11</sup> *Id.*

In the Opposition, FRSN concedes that the allegations in the Objection are accurate, but counters that it has amended its application to bring the antenna pattern into compliance.<sup>12</sup> FRSN further argues that its amendment is permissible because it has not enhanced its section 307(b) fair distribution of service claims, and in fact, the population data remains the same.<sup>13</sup>

*Discussion.* Pursuant to section 309(d) of the Act,<sup>14</sup> petitions to deny and informal objections 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.<sup>15</sup>

Section 73.316(b)(2) of the rules specifies that directional antennas used to protect short-spaced stations with a radiation pattern which varies more than 2 dB per 10 degrees of azimuth will not be authorized.<sup>16</sup> While FRSN admits its original application failed to adhere to this requirement, FRSN has amended its application to comply with the section 73.316(b)(2) restrictions.<sup>17</sup> David cites to no authority that the failure to adhere to antenna radiation pattern requirements is a non-curable defect.<sup>18</sup> Accordingly, we find that dismissal of the FRSN Application is not warranted since FRSN has updated its proposed antenna radiation pattern to comply with section 73.316(b)(2), and amended its application to include the new parameters. Moreover, the staff has independently reviewed the Amended FRSN Application, determined that the proposed directional antenna pattern complies with section 73.316(b)(2), and confirmed that FRSN's fair distribution population and service area data are not affected by the amendment. Therefore, we reject David's argument that we should rescind the Commission's tentative selection of the FRSN Application.

**Conclusion/Action.** For the reasons set forth above, **IT IS ORDERED** that the Informal Objection, filed by Albert Adam David on August 8, 2022, **IS DENIED**.

**IT IS FURTHER ORDERED** that the Application filed by Free Radio Santa Nella (Application File No. 0000167151) for a construction permit for a new NCE FM station in Santa Nella, California **IS GRANTED CONDITIONED UPON** that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is

---

<sup>12</sup> Opposition at 2. On August 10, 2022, FRSN filed an amendment to its application that revised its antenna pattern (Amended FRSN Application).

<sup>13</sup> *Id.*

<sup>14</sup> 47 U.S.C. § 309(d).

<sup>15</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F. 2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>16</sup> See 47 CFR §73.316(b)(2).

<sup>17</sup> See Amended FRSN Application.

<sup>18</sup> *Compare Christian Charities Deliverance Church et. al.*, Memorandum Opinion and Order, 30 FCC Rcd 10548 (2015) (affirming dismissal of LPFM applications that violated section 73.807 of the rules (minimum distance separations) without opportunity to cure, because section 73.870(c) of the rules explicitly provided that no curative amendments would be permitted for such violations). Thus, had the Bureau dismissed the FRSN Application for failing to comply with section 73.316(b)(2), FRSN would have been entitled to file a curative amendment correcting that deficiency. Dismissed applicants are permitted to submit one minor modification amendment to cure certain application deficiencies. See 47 CFR § 73.3522(a)(2); *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776 (1984).

awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

**IT IS FURTHER ORDERED** that the mutually exclusive application of Ondas de Vida, Inc. (Application File No. 0000167248) **IS DISMISSED**.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau