



Federal Communications Commission
Washington, D.C. 20554

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DA 23-260

In Reply Refer To:

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New Media Humanity Association Inc.
c/o Endre Kovacs
3211 Polo Place
Plant City, FL 33567
(sent by electronic email to: kovacsradio@gmail.com)

Central Baptist Church of Ocala Inc.
c/o James E. Price, III
P.O. Box 1877
LaFayette, GA 30728
(sent by electronic email to: sterlingjamesp@gmail.com)

Call Communications Group, Inc.
c/o Robert Robbins
20808 SW 83rd Ave
Cutler Bay, FL 33189
(sent by electronic email to: radiodataservices@radiodataservices.com)

Ethree Group, Inc.
c/o Charles Keiler
271 NW 53 Court
Deerfield Beach, FL 33064
(sent by electronic email to: ckeiler@ethree.us)

In re: **NCE MX Group 54**

**New Media Humanity Association
Inc.**

New NCE (FM), Weeki Wachee,
Florida

Facility ID No. 768183

Application File No. 0000166731

Central Baptist Church of Ocala Inc.

New NCE (FM), Weeki Wachee,
Florida

Facility ID No. 762579

Application File No. 0000166338

Call Communications Group, Inc.
New NCE (FM), Weeki Wachee,
Florida
Facility ID No. 768626
Application File No. 0000167753

Ethree Group, Inc.
New NCE (FM), Weeki Wachee,
Florida
Facility ID No. 768712
Application File No. 0000167131

Petition to Deny

Dear Applicants:

We have before us four mutually exclusive (MX) applications filed by Call Communications Group, Inc. (CCGI), Ethree Group, Inc. (EGI), New Media Humanity Association Inc. (NMHA), and Central Baptist Church of Ocala Inc. (CBCO) for construction permits for new noncommercial educational (NCE) FM stations in Weeki Wachee, Florida, which the Media Bureau (Bureau) designated as NCE MX Group 54.¹ The Commission identified the NMHA Application as the tentative selectee of the group.² We also have before us a Petition to Deny the NMHA Application³ filed by CCGI. For the reasons set forth below, we grant in part and deny in part the Petition, grant the NMHA Application, and dismiss the CCGI, EGI, and CBCO⁴ Applications.⁵

¹ *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Education Stations; Opens Window to Accept Settlements and Technical Amendments*, Public Notice, 36 FCC Rcd 16452 (MB 2021); *see also* Application File Nos. 0000166731 (NMHA Application); 0000166338 (CBCO Application); 0000167753 (CCGI Application); and 0000167131 (EGI Application).

² *Comparative Consideration of 34 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 23-5, at 12-13, paras. 39-41 (Jan. 24, 2023) (*Third Comparative Order*).

³ *See* Petition, Pleading File No. 0000210915 (filed Feb. 16, 2023) (Petition). NMHA did not file an opposition to the Petition.

⁴ CCGI also filed an Informal Objection to the CBCO Application. Pleading File No. 0000178411 (filed Jan. 3, 2022). It is the Bureau's well-settled policy to not consider petitions to deny or informal objections filed against non-tentative selectees. *See Centro Familiar de Restauracion y Vida*, Letter Order, DA 22-771 (MB 2022). Moreover, the Informal Objection raised the same issues with the CBCO Application that were raised in the Petition. Accordingly, we will not consider this pleading and dismiss it.

⁵ In the *Third 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." *Third Comparative Order* at 26, para. 108. 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 26, para. 108.

Background. The subject applications were filed during the November 2021, NCE FM filing window.⁶ In the *Third Comparative Order*,⁷ the Commission determined that because all four applications proposed to serve the same community, they would proceed to a point system analysis.⁸ No applicant claimed points as an established local applicant, and the Commission determined that each applicant was eligible for two diversity of ownership points.⁹ The Commission further determined that no applicant was entitled to a point under the best technical proposal criterion because no applicant proposed to serve at least 10% more area and population than the next best proposal.¹⁰ The applicants thus proceeded to a tie-breaker analysis.¹¹ CCGI and CBCO were eliminated under the first tie-breaker, and NMHA prevailed over EGI under the second tie-breaker.¹² Thus, the Commission ultimately identified NMHA as the tentative selectee of NCE MX Group 54.¹³

In the Petition, CCGI argues that the Group 54 comparative analysis was based on inaccurate information due to CBCO's improper inclusion of significant areas of water in its new coverage area calculation.¹⁴ Specifically, CCGI demonstrates that the coverage area claimed by CBCO is approximately 715.7 square kilometers, or 32% less than the 944.8 square kilometers it originally claimed.¹⁵ CCGI asserts that excluding the CBCO Application, CCGI is eligible for one point under best technical proposal because it would serve 10% more area and population than the next best application, that of NMHA, and thus CCGI should be the new tentative selectee.¹⁶

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended,¹⁷ 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.¹⁸

Neither NMHA nor CBCO refutes CCGI's claims that CBCO erroneously calculated the new area that its proposal would serve, and the Bureau staff has independently verified that the CBCO Application incorrectly included significant areas of water in its calculation. Therefore, we grant the

⁶ *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).

⁷ *Third Comparative Order* at 12-13, paras. 39-41.

⁸ *Id.* at 12, para. 39.

⁹ *Id.* at 12, para. 40.

¹⁰ *Id.*

¹¹ *Id.* at 12, para. 40.

¹² *Id.* at 12-13, para. 41.

¹³ *Id.*

¹⁴ Petition at 1-2 and attached map.

¹⁵ *Id.*

¹⁶ *Id.* at 2.

¹⁷ 47 U.S.C. § 309(d).

¹⁸ *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).

Petition in part. Accepting CCGI's calculation, however, does not automatically render the CCGI application the new tentative selectee as CCGI proposes. CCGI incorrectly suggests that CBCO should be excluded altogether from the best technical proposal calculation. Rather, we will reanalyze the applicants' technical proposals using the revised figures CCGI provided.¹⁹

As noted in the *Third Comparative Order*, CCGI's proposed 60 dBu contour would encompass 847 square kilometers with a population of 110,411; EGI's proposed 60 dBu contour would encompass 693 square kilometers with a population of 88,689; and NMHA's proposed 60 dBu contour would encompass 668 square kilometers with a population of 97,594.²⁰ Using CCGI's calculations, CBCO's proposed 60 dBu contour would encompass 715.7 square kilometers with a population of 105,470. Thus, accepting CCGI's undisputed claim that CBCO's actual coverage area is 715.7 square kilometers, there is still no applicant eligible for points under the best technical proposal criterion because no applicant proposes to serve at least 10% more area *and* population than the next best proposal. CCGI does not challenge any other points calculation. Accordingly, the points total has not changed. Because NMHA still has the highest point total, it remains the tentative selectee, and we need not refer this group to the Commission to conduct a new point system analysis.²¹ Therefore, we deny in part the Petition to the extent it seeks to have CCGI declared the new tentative selectee of NCE MX Group 54.

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED** that the Petition to Deny filed by Call Communications Group, Inc., on February 16, 2023 (Pleading File No. 0000210915), **IS GRANTED IN PART AND DENIED IN PART**, and the Informal Objection filed by Call Communications Group, Inc., on January 3, 2022 (Pleading File No. 0000178411) **IS DISMISSED**.

IT IS FURTHER ORDERED that the Application filed by New Media Humanity Association Inc. (File No. 0000166731) for a construction permit for a new NCE FM station in Weeki Wachee, Florida **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 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, and **PROVIDED THAT**, New Media Humanity Association Inc. must surrender or otherwise divest itself of its license for WYPW-LP, Brandon, Florida, prior to commencement of program tests of the full service NCE FM station.

¹⁹ See, e.g., *Comparative Consideration of 18 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 26 FCC Rcd 803, 809, para. 16 (2011 (using objector's population figures where it claims a competing applicant's application had incorrect area figures because it erroneously included large area of water and applicant did not provide corrected figures)).

²⁰ *Third Comparative Order* at 12, para. 40.

²¹ *Third Comparative Order* at 26, para. 108 ("We delegate to the staff authority 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."). See also *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101, 6162, n.230 (2007) ("If the Bureau finds that there are no new or novel questions, or material questions that would cause the tentative selectee to have fewer than or the same number of points as another applicant in the group, the staff would act on the petition(s) to deny, and by public notice grant the application of the tentative selectee and dismiss the competing mutually exclusive application. This function is consistent with the Bureau's delegated authority." (citations omitted)).

IT IS FURTHER ORDERED that the mutually exclusive application of Ethree Group, Inc. (Application File No. 0000167131) **IS DISMISSED**.

IT IS FURTHER ORDERED that the mutually exclusive application of Call Communications Group, Inc. (Application File No. 0000167753) **IS DISMISSED**.

IT IS FURTHER ORDERED that the mutually exclusive application of Central Baptist Church of Ocala Inc. (Application File No. 0000166338) **IS DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau