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Sanctuary Church  
c/o James E. Price, III  
P.O. Box 1877  
LaFayette, GA 30728  
(sent by electronic email to: [sterlingjamesp@gmail.com](mailto:sterlingjamesp@gmail.com))

Frequency Zero, Inc.  
c/o Francisco Montero, Esq.  
Fletcher, Heald & Hildreth, PLC  
1300 N. 17<sup>th</sup> Street, Ste. 1100  
Arlington, VA 22209  
(sent by electronic email to: [montero@fhhlaw.com](mailto:montero@fhhlaw.com))

In re: **NCE MX Group 63**

**Sanctuary Church**

New NCE FM, Darien, Georgia  
Facility ID No. 766888  
Application File No. 0000165972

**Frequency Zero, Inc.**

New NCE FM, Darien, Georgia  
Facility ID No. 763893  
Application File No. 0000166102

**Petition to Deny**

Dear Applicants:

We have before us two mutually exclusive (MX) applications filed by Sanctuary Church (SC) and Frequency Zero, Inc. (FZI) for construction permits for new noncommercial educational (NCE) FM stations in Darien, Georgia, which the Media Bureau (Bureau) designated as NCE MX Group 63.<sup>1</sup> The

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<sup>1</sup> *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. 0000165972 (SC Application); 0000166102 (FZI Application). NCE MX Group 63 originally included a third application for a proposed station in Darien, Georgia, filed by Inverse Focus Ministry, Inc. Application File No. 0000167489 (IFM Application). The IFM Application was amended on February 23, 2023, to eliminate its mutual exclusivity with the other applications in NCE MX Group 63, making the IFM Application a singleton. *See* IFM Application, Amendment (filed Feb. 23, 2023) at Attach. "MX Group 63 Settlement.pdf".

Commission identified the SC Application as the tentative selectee of the group.<sup>2</sup> We also have before us a Petition to Deny the SC Application<sup>3</sup> filed by FZI. For the reasons set forth below, we dismiss the SC Application.<sup>4</sup> We will withhold action on the Petition and the FZI Application until dismissal of the SC Application becomes final.<sup>5</sup>

*Background.* The subject applications were filed during the November 2021, NCE FM filing window.<sup>6</sup> In the *Third Comparative Order*,<sup>7</sup> the Commission determined that because each applicant proposes to serve the same community, the three applicants would proceed to a point system analysis.<sup>8</sup> SC was awarded three points as an established local applicant; SC, IFM, and FZI each received two points for diversity of ownership.<sup>9</sup> Accordingly, SC was credited with the most points and designated the tentative selectee in Group 63.<sup>10</sup>

In the Petition, FZI argues that SC is ineligible to hold an NCE license because it is neither incorporated in the state of Georgia, nor recognized as an unincorporated association under Georgia law.<sup>11</sup> FZI also attaches exhibits demonstrating that: 1) there are no registered articles of incorporation for SC in Georgia; 2) SC's associated FCC Registration Number (FRN) is actually registered to Downtown Baptist Sanctuary Church Incorporated (DBSCI), which incorporated as a non-profit in 2008, failed to file annual

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<sup>2</sup> *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 13-14, paras. 45-46 (Jan. 24, 2023) (*Third Comparative Order*).

<sup>3</sup> See Pleading File No. 0000211164 (filed Feb. 22, 2023) (Petition). As of the date of this Letter, SC has not filed an Opposition to the Petition.

<sup>4</sup> 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.*

<sup>5</sup> See 47 CFR § 1.117(a) (providing for 40 days after public notice of the Bureau’s decision for the Commission on its own motion to order the record before it for review). In addition to the issue discussed below, the Petition also argues that SC is ineligible to claim three established local applicant points. Petition at 3-5. We will not consider arguments concerning SC’s eligibility for points at this time, but will do so should SC seek *nunc pro tunc* reinstatement of its corporate status. See, e.g., *New Bohemia Group, Inc.*, Letter Order, 24 FCC Rcd 1357, 1360 (MB 2009) (granting new NCE FM application where applicant’s corporate status had lapsed with the State of Iowa, but applicant had sought *nunc pro tunc* reinstatement of its corporate status with the state) (citing *Fatima Response, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 18543, 18546 (1999), *recon. dismissed*, 15 FCC Rcd 10520 (2000)).

<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> *Third Comparative Order* at 13-14, paras. 45-46.

<sup>8</sup> *Id.* at 13, para. 45.

<sup>9</sup> *Id.* at 13, para. 46.

<sup>10</sup> *Id.* at 13-14, para. 46.

<sup>11</sup> Petition at 10-12 and 13-14.

registrations, and was administratively dissolved by the Georgia Secretary of State in 2016;<sup>12</sup> and 3) there is no process for entities to otherwise register as unincorporated associations in Georgia.<sup>13</sup>

*Discussion.* Applicants for NCE stations must meet basic eligibility requirements.<sup>14</sup> Further, applicants must be incorporated or otherwise recognized under state law at the time of filing in order to qualify for an NCE FM license.<sup>15</sup> SC has not refuted FZI's claim that it is ineligible to hold an NCE license because its corporate status was dissolved in 2016. Further, FZI submits screenshots of the Georgia Secretary of State Corporations Division search, demonstrating that there is no current corporate authorization for either SC or DBSCI, the entity associated with SC's FRN.<sup>16</sup> The staff has independently reviewed the records of the Georgia Secretary of State, determined that DBSCI's corporate status lapsed in 2016, and the corporation is currently dissolved.<sup>17</sup> Accordingly, we find SC ineligible to hold an NCE license and dismiss the SC Application.

*Conclusion/Actions.* For the reasons set forth above, **IT IS ORDERED** that the application of Sanctuary Church (Application File No. 0000165972) **IS DISMISSED**.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>12</sup> *Id.* at 11 and Exhs. A-C.

<sup>13</sup> *Id.* at 11-12.

<sup>14</sup> 47 CFR § 73.503(a) (“A noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program.”); *see also* 47 U.S.C. § 397(6)(A) (eligibility for noncommercial broadcast stations).

<sup>15</sup> *See Applications For Review of Decision Regarding Six Applicants For New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13394, para. 12 (2013); *Hope Radio of Rolla, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 7754, 7754, para. 2 (2013) (to be eligible to hold an authorization for an NCE service, the applicant “must be a public agency or non-profit private foundation, corporation, or association that is recognized by the laws of the state in which it proposes to operate at the time it submits its application”).

<sup>16</sup> Petition at 11-12 and Exhs. A-C.

<sup>17</sup> *See* Georgia Corporations Division, <https://ecorp.sos.ga.gov/BusinessSearch/BusinessInformation?businessId=1348222&businessType=Domestic%20Nonprofit%20Corporation&fromSearch=True> (last visited Apr. 12, 2023).