



Federal Communications Commission
Washington, D.C. 20554

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DA 23-358
In Reply Refer To:
1800B3-ARR
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In re: **NCE MX Group 200**

**Christian Ministries of the Valley,
Inc.**

New NCE (FM), Port Arthur, Texas
Facility ID No. 762635
Application File No. 0000166728

CCS Radio, Inc.

New NCE (FM), Port Arthur, Texas
Facility ID No. 766799
Application File No. 0000166698

Call Communications Group, Inc.

New NCE (FM), Beaumont, Texas
Facility ID No. 768966
Application File No. 0000167747

Vida Ministry Inc.
New NCE (FM), Central Gardens,
Texas
Facility ID No. 768210
Application File No. 0000167104

Petition to Deny

Dear Applicants:

We have before us four mutually exclusive (MX) applications filed by Call Communications Group, Inc. (CCGI), Vida Ministry Inc. (VMI), Christian Ministries of the Valley, Inc. (CMV), and CCS Radio, Inc. (CCSR) for construction permits for new noncommercial educational (NCE) FM stations in Texas, which the Media Bureau (Bureau) designated as NCE MX Group 200.¹ The Commission identified the VMI Application as the tentative selectee of the group.² We also have before us a Petition to Deny the VMI Application³ filed by CCGI, and related responsive pleadings.⁴ For the reasons set forth below, we grant in part and deny in part the Petition, grant the VMI Application, and dismiss the CCGI, CMV, and CCSR⁵ Applications.⁶

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. 0000167747 (CCGI Application); 0000167104 (VMI Application); 0000166728 (CMV Application); and 0000166698 (CCSR 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 22, paras. 89-91 (Jan. 24, 2023) (*Third Comparative Order*).

³ *See* Pleading File No. 0000210918 (filed Feb. 16, 2023) (Petition).

⁴ *See* Motion for Extension of Time, Pleading File No. 0000212271 (filed Mar. 8, 2023) (explaining that counsel for VMI was unavailable for two weeks due to COVID, and stating that CCGI consented to grant of the request); Opposition, Pleading File No. 0000212563 (filed Mar. 15, 2023); Reply, Pleading File No. 0000212735 (filed Mar. 20, 2023).

⁵ CCGI also filed Informal Objections to the CMV and CCSR Applications. Pleading File Nos. 0000178480 and 0000178495 (filed Jan. 3, 2022). It is the Bureau's well-settled policy not to 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) (citing 47 CFR § 73.3584(a)). Moreover, the Informal Objections raise the same issues that were raised in the Petition. Accordingly, we will not consider these pleadings and dismiss them herein.

⁶ 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.*

Background. The subject applications were filed during the November 2021, NCE FM filing window.⁷ In the *Third Comparative Order*,⁸ the Commission determined that no applicant claimed eligibility for a fair distribution preference, and therefore, proceeded to a point system analysis.⁹ No applicant claimed points as an established local applicant or state-wide network. The Commission awarded CCGI and VMI two points each for diversity of ownership.¹⁰ The Commission further determined that no applicant was entitled to points under the best technical proposal criterion because no applicant proposed to serve at least 10% more area and population than the next best proposal.¹¹ CMV and CCSR were credited with zero points and eliminated, and CCGI and VMI, with two points each, proceeded to a tie-breaker analysis.¹² CCGI was eliminated under the first tie-breaker.¹³ Thus, the Commission identified VMI as the tentative selectee of NCE MX Group 200.¹⁴

In the Petition, CCGI argues that the Group 200 comparative analysis was based on inaccurate and unsupported calculations, due to CMV and CCSR's improper inclusion of significant areas of water in their new coverage area calculations.¹⁵ Specifically, CCGI demonstrates that the actual coverage area of CMV's proposal is approximately 1,321 square kilometers, or 42.6% less than the 1,881.6 square kilometers it originally claimed.¹⁶ CCGI also demonstrates that the actual coverage area of CCSR's proposal is approximately 806.23 square kilometers, or 73.2% less than the 1,402.2 square kilometers it originally claimed.¹⁷ CCGI asserts that excluding the CMV and CCSR Applications, CCGI is eligible for two points under best technical proposal because it would serve 25% more area and population than the remaining application, that of VMI, and thus CCGI should be the new tentative selectee.¹⁸

In its Opposition, VMI argues that accepting CCGI's calculations would not produce a different result than the Commission reached in the *Third Comparative Order* because no applicant would serve at least 10% more area and population than the next application.¹⁹ VMI also maintains that Schedule 340 does not require an attachment explaining the applicant's technical parameters calculation, but merely requires that applicants include an exhibit in their public inspection files.²⁰

In its Reply, CCGI reiterates that the CMV and CCSR calculations lacked support and further argues that: 1) the *NCE Filing Procedures Public Notice* requires applicants to include an application

⁷ *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).

⁸ *Third Comparative Order* at 22, paras. 89-91.

⁹ *Id.* at para. 89.

¹⁰ *Id.* at para. 90. CMV and CCSR did not claim points under this criterion.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at para. 91.

¹⁴ *Id.*

¹⁵ Petition at 1-2. The Petition includes two maps explaining CCGI's analysis.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 2.

¹⁹ Opposition at 3-4.

²⁰ *Id.* at 2-3, citing Schedule 340 Instructions.

exhibit supporting the new area served, rather than including it in a public inspection file;²¹ 2) CMV and CCSR's certifications of their area coverage calculations are improper, and neither CMV nor CCSR has amended its coverage claims;²² and 3) the Commission lacks a rational basis to accept erroneous and unsupported population claims made in the two applications.²³

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended,²⁴ 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.²⁵

VMI, CMV, and CCSR do not refute CCGI's claims that CMV and CCSR each erroneously calculated the new area that its proposal would serve, and the Bureau staff has independently verified that the CMV and CCSR Applications incorrectly included significant areas of water in each of their calculations. Therefore, we grant the Petition in part. Accepting CCGI's calculations, however, does not automatically render the CCGI application the new tentative selectee, as CCGI proposes.

CCGI incorrectly suggests that CMV and CCSR should be excluded altogether from the best technical proposal calculation. In cases where non-tentative selectees have provided inaccurate area and population coverage data, however, we do not dismiss the applications.²⁶ Rather, we reanalyze the applicants' technical proposals using the corrected data.²⁷ Thus, we will reanalyze the applicants' technical proposals using the revised figures that CCGI provided.²⁸

²¹ Reply at 1-2; *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2- 9, 2021, Window; Limited Application Filing Freeze to Commence on October 5, 2021*, Public Notice, 36 FCC Rcd 11458, 11466 (MB 2021) (*NCE Filing Procedures Public Notice*) ("Each applicant must include an application exhibit explaining how it calculated the technical parameters. The applicant should specify the year and blocks of census information used and the method used to determine area.").

²² Reply at 2-3.

²³ *Id.* at 3.

²⁴ 47 U.S.C. § 309(d).

²⁵ 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).

²⁶ CCGI also asserts that the CMV and CCSR Applications should not be considered because they did not provide documentation explaining their area and population calculations. CCGI, however, cites to no instance where we have dismissed an application on this basis. Moreover, although we have denied applicants their claimed points based on insufficient supporting documentation, we have never dismissed an application, and excluded an applicant from our comparative analysis, due to incomplete documentation.

²⁷ 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).

²⁸ For purposes of this analysis, we will again use the population numbers specified in the applications, which are not in dispute. We reject CCGI's claim that the CMV and CCSR Applications should not be considered because "the Bureau lacks a rational basis to accept potentially erroneous or unsupported application claims." Reply at 3.

As noted in the *Third Comparative Order*, CCGI's proposed 60 dBU contour would encompass 1,157 square kilometers with a population of 218,225 and VMI, 539 square kilometers and 114,876 people.²⁹ Using CCGI's calculations, CMV's proposed 60 dBU contour would encompass 1,321 square kilometers with a population of 221,770, and CCSR, 806.23 square kilometers and 108,218 people. Thus, accepting CCGI's undisputed claim that CMV and CCSR's actual coverage areas are 1,321 and 806.23 square kilometers, respectively, 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 VMI 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.³⁰ Therefore, we deny in part the Petition to the extent it seeks to have CCGI declared the new tentative selectee of NCE MX Group 200.

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. 0000210918), **IS GRANTED IN PART AND DENIED IN PART**, and the Informal Objections filed by Call Communications Group, Inc., on January 3, 2022 (Pleading File Nos. 0000178480 and 0000178495) **ARE DISMISSED**.

IT IS FURTHER ORDERED that the Application filed by Vida Ministries Inc. (Application File No. 0000167104) for a construction permit for a new NCE FM station in Central Gardens, Texas, **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.

IT IS FURTHER ORDERED that the mutually exclusive application of Christian Ministries of the Valley, Inc. (Application File No. 0000166728) **IS DISMISSED**.

IT IS FURTHER ORDERED that the mutually exclusive application of Call Communications Group, Inc. (Application File No. 0000167747) **IS DISMISSED**.

Acceptance of applicants' area and population figures is neither irrational nor arbitrary, and is critical to Bureau staff's efficient processing of new NCE FM applications. The Bureau does not process and review each application for acceptability and grantability. Rather, to efficiently process and grant applications, the Bureau only reviews, accepts for filing, and processes the one application identified, after the comparative analysis, as the tentative selectee of the MX Group. Potential arguments that erroneous data or claims affected the comparative analysis may be raised, and are considered, in the petition to deny process. *See, e.g., Third Comparative Order* at para. 14 ("in considering this criterion [best technical proposal] we have accepted applicant's coverage and population claims."); *Cultural Energy*, Letter Order, 26 FCC Rcd 12766, 12768 (MB 2011) (considering objections against non-tentative selectees are wasteful and inefficient).

²⁹ *Third Comparative Order* at 22, para. 90.

³⁰ *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 CCS Radio, Inc. (Application File No. 0000166698) **IS DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau