



**Federal Communications Commission**  
Washington, D.C. 20554

**January 17, 2023**

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In re: **St. Gabriel Communications**  
New NCE FM, Spencer, IA  
Facility ID No. 767664  
Application File No. 0000167515

**Informal Objection**

Dear Applicant and Objector:

We have before us the application, as amended, filed by St. Gabriel Communications (SGC) for a construction permit for a new noncommercial education (NCE) FM station at Spencer, Iowa.<sup>1</sup> We also have before us the Informal Objection to the SGC Application, filed by Kevin J. Youngers (Youngers), and a related responsive pleading.<sup>2</sup> For the reasons set forth below, we deny the Objection, deny the May 19, 2022, amendment to the SGC Application, and grant the SGC Application as amended by the May 16, 2022, amendment.

*Background.* SGC filed the SGC Application during the 2021 NCE FM Filing Window.<sup>3</sup> The Media Bureau (Bureau) identified the SGC Application as part of MX Group 78.<sup>4</sup> This group consisted of four mutually exclusive (MX) applications: the SGC Application, the application of Fairmont Area

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<sup>1</sup> Application File No. 0000167515 (SGC Application). As discussed below, SGC filed two amendments to the Application: one on May 16, 2022, and one on May 19, 2022.

<sup>2</sup> Pleading File No. 0000193345 (filed June 14, 2022) (Objection). SGC filed an Opposition to the Objection. Pleading File No. 0000197019 (filed Aug. 4, 2022) (Opposition). Youngers did not file a reply to the Opposition.

<sup>3</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>4</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) (*MX Groups Public Notice*).

Catholic Radio,<sup>5</sup> the application of VCY American, Inc.,<sup>6</sup> and the application of We Have This Hope Christian Radio, Inc.<sup>7</sup>

On April 4, 2022, the Bureau identified the FACR Application as the tentative selectee of MX Group 78.<sup>8</sup> The Bureau established a 30-day period for filing petitions to deny after which, if there was no substantial and material question concerning the grantability of the FACR Application, it would grant that application and dismiss the remaining mutually exclusive applications, including the SGC Application.<sup>9</sup> On May 16, 2022, SGC filed a minor technical amendment to its application to eliminate its mutual exclusivity with all other applications in MX Group 78 and render its application a singleton.<sup>10</sup> No party filed a petition to deny the FACR Application, and accordingly, on May 18, 2022, the Bureau granted the FACR Application and dismissed the VCY Application and the Hope Application. On May 19, 2022, SGC filed another minor technical amendment to its SGC Application, which sought authorization to increase the effective radiated power from 6 kW to 22 kW.<sup>11</sup> This amendment was only possible because the Bureau had dismissed the VCY Application.

On June 14, 2022, Youngers filed his Objection, claiming that SGC should not have been permitted to file its May 16 or May 19 amendments because “[n]o amendments on the original NCE applications were allowed after the settlement period which were before the [*Fair Distribution Order*].”<sup>12</sup> Youngers also argues that the Bureau should not accept amendments after the 30-day petition to deny period runs because only one application may be granted from each MX group, and “[i]f applications . . . can be amended after the selection process, then there is less pressure to make any settlements in the settlement period.”<sup>13</sup>

In the Opposition, SGC argues that section 73.7003(d) of the Commission’s rules (Rules) permits applications to be amended at any time, and that the Commission routinely accepts minor technical amendments after the settlement period has run.<sup>14</sup>

*Discussion.* Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),<sup>15</sup> petitions to deny and informal objections must provide properly supported allegations of fact that, if true,

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<sup>5</sup> Application File No. 0000167071 (FACR Application).

<sup>6</sup> Application File No. 0000167877 (VCY Application).

<sup>7</sup> Application File No. 0000167166 (Hope Application).

<sup>8</sup> *Threshold Fair Distribution Analysis of 16 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-356 (MB Apr. 4, 2022) (*Fair Distribution Order*).

<sup>9</sup> *Id.* at 11, para. 38.

<sup>10</sup> SGC Application, Amendment at Attach. “St. Gabriel Communications NEW Spencer IA – Purpose of Amendment 5-16-2022.pdf” (filed May 16, 2022).

<sup>11</sup> SGC Application, Amendment at Attach. “St. Gabriel Communications NEW Spencer IA – Purpose of Amendment No.2 5-19-2022.pdf” (filed May 19, 2022).

<sup>12</sup> Objection at 1.

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

<sup>14</sup> Opposition at 1 (citing 47 CFR § 73.7003(d)).

<sup>15</sup> 47 U.S.C. § 309(d).

would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.<sup>16</sup>

We reject Younger’s suggestion that the May 16 amendment to the SGC application was prohibited, and that the application grant would violate the one-grant policy. Under the one-grant policy, the Commission only grants one application (or tied applications) per mutually exclusive group.<sup>17</sup> In our most recent review of our NCE processing rules, the Commission explicitly upheld the one-grant policy and rejected requests to allow for secondary grants after selection of a tentative selectee.<sup>18</sup> However, nothing in the Rules, the *MX Groups Public Notice*, nor our NCE FM processing procedures<sup>19</sup> prohibits an applicant from filing an amendment to eliminate its mutual exclusivities before, or after, the Bureau or the Commission conducts its comparative analysis. Specifically, the Commission held that it would “continue to permit additional grants from an MX group if an applicant—by *technical amendment*, the voluntary dismissal of competing applications, and/or a valid settlement agreement—*eliminates all conflicts to other applications in the group*.”<sup>20</sup> Here, SGC’s May 16 amendment fully resolved all of its mutually exclusivities with all of the other applicants in MX Group 78 and thus completely removed the application from MX Group 78. This amendment was not dependent on the Commission dismissing applications from the MX group and, therefore, does not violate our one-grant policy.

In contrast, SGC’s subsequent May 19 technical amendment to its engineering proposal violates our one-grant policy.<sup>21</sup> Unlike the May 16 amendment, SGC’s May 19 amendment is dependent on the Commission *involuntarily* dismissing the VCY Application, which is the type of secondary grant the Commission previously rejected.<sup>22</sup> The Commission has affirmed the dismissal of applications that became singletons based solely on the involuntary dismissal of other conflicting applications in the MX group.<sup>23</sup> We have also recently rejected similar efforts by applicants that rely on the involuntary

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<sup>16</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>17</sup> *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, MB Docket No. 19-3, Report and Order, 34 FCC Rcd 12519, 12542, para. 59 (2019) (*2019 NCE LPFM Order*) (emphasis added), *aff’d* Order on Reconsideration, 35 FCC Rcd 10180 (2020) (*NCE Order on Reconsideration*) (affirming the Commission’s long standing one-grant policy).

<sup>18</sup> *Id.*

<sup>19</sup> See, e.g., *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 (MB 2021).

<sup>20</sup> *2020 NCE LPFM Order*, 34 FCC Rcd at 12528, n.68; see also *NCE Order On Reconsideration*, 35 FCC Rcd at 10180, para. 2 (“[p]rior to dismissal, an applicant can seek to remove itself from the MX group to achieve grant as a ‘singleton’ either by settling with other applicants in the group or by modifying its own engineering proposal.”) (emphasis added).

<sup>21</sup> We reject SGC’s reliance on section 73.7003(d) to justify its second amendment. The rule only applies to settlements, not to unilateral amendments. See 47 CFR § 73.7003(d).

<sup>22</sup> SGC’s May 16 amendment was *not* premised on the involuntary dismissal of other applications in the MX group and eliminated all conflicts with the other applications in the MX group. See, e.g., *NCE October 2007 Window MX Group Number 363*, Letter Order, 25 FCC Rcd 9060 (MB 2010) (differentiating between a voluntary withdrawal that facilitated a settlement agreement and our “one selectee per NCE MX group” policy).

dismissal of mutually exclusive applications to circumvent the one-grant policy.<sup>24</sup> Accordingly, we deny the May 19 amendment, deny the Objection, and grant the SGC Application, as amended on May 16, 2022.<sup>25</sup>

*Conclusion/Action.* Accordingly, **IT IS ORDERED** that the Informal Objection, filed on June 14, 2022 (Pleading File No. 0000193345) by Kevin J. Youngers, **IS DENIED**.

**IT IS FURTHER ORDERED** the amendment filed by St. Gabriel Communications on May 19, 2022, to its pending application for a construction permit for a new noncommercial educational FM station at Spencer, Iowa (Application File No. 0000167515) **IS DENIED**.

**IT IS FURTHER ORDERED** that the application of St. Gabriel Communications for a construction permit for a new noncommercial educational FM station at Spencer, Iowa, as amended on May 16, 2022 (Application File No. 0000167515), **IS GRANTED**.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>23</sup> See, e.g., *Christian Music Network*, Memorandum Opinion and Order, 29 FCC Rcd 13268 (2014).

<sup>24</sup> *Centro Familiar de Restauracion y Vida*, Letter Order, DA 22-771 (MB July 18 2022).

<sup>25</sup> SGC is not precluded from filing a modification application to its construction permit, or modifying its facility at a later time.