



Federal Communications Commission  
Washington, D.C. 20554

June 7, 2023

**DA 23-483**

*In Reply Refer to:*

**1800B3-IB**

Released: **June 7, 2023**

Bertrand Stebbins, President  
Key West Radio  
112 East Cahill Ct.  
Big Pine Key, FL 33043

Francisco Montero, Esq.  
Fletcher, Heald & Hildreth, PLC  
Counsel to Frequency Zero, Inc.  
1300 N. 17<sup>th</sup> St., Suite 1100  
Arlington, VA 22209  
(via e-mail to [montero@fhhlaw.com](mailto:montero@fhhlaw.com))

In re: **NCE MX Group 55**

**Key West Radio**

New NCE FM, Key West, FL  
Facility ID No. 767101  
File No. 0000167215

**Ethree Group, Inc.**

New NCE FM, Big Pine, FL  
Facility ID No. 768318  
Application File No. 0000166738

**Specialized Educational Broadcasting**

New NCE FM, Key West, FL  
Facility ID No. 766298  
Application File No. 0000166812

**Frequency Zero, Inc.**

New NCE FM, Stock Island, FL  
Facility ID No. 765461  
Application File No. 0000166105

Petition to Deny

Dear Counsel and Applicants:

The Media Bureau (Bureau) has before it: (1) an application on Form 2100, Schedule 340 from Key West Radio (KWR), filed on November 9, 2021, for authority to construct a new noncommercial

educational (NCE) FM station at Key West, Florida,<sup>1</sup> which the Commission tentatively selected over several mutually-exclusive applications;<sup>2</sup> (2) a Petition to Deny filed by Frequency Zero, Inc. (FZI),<sup>3</sup> a mutually-exclusive (MX) applicant that seeks to construct a new NCE FM station at Stock Island, Florida;<sup>4</sup> (3) MX applications from two other applicants to construct stations in nearby communities;<sup>5</sup> and (4) responsive pleadings.<sup>6</sup> For the reasons set forth below, we grant the Petition, dismiss the KWR Application, and accept the FZI Application as the new tentative selectee. In addition, we are applying a new disclosure requirement for future applications filed within the next ten years by certain persons associated with KWR and an entity known as 305 Community Radio (305).

**Background.** Applications for new broadcast stations must include all information requested on the application form as well as any additional information the Commission may deem necessary.<sup>7</sup> An application without required information is defective, and the Bureau will, therefore, dismiss it. At issue in the instant proceeding is whether to dismiss the KWR Application for failure to include qualifications-related information that the Bureau required certain individuals allegedly associated with KWR to file with all applications attributable to them.

The KWR Application is part of “Group 55,” which consists of four MX applications to construct new NCE FM stations in the Florida Keys.<sup>8</sup> The Bureau can grant only one of these applications because they are in technical conflict. In such circumstances, the Commission conducts a paper hearing using a point system and tiebreakers to identify the applicant that best meets criteria set forth in Commission rules (Rules).<sup>9</sup> The applicant with the highest point total and/or best position in the tiebreaker becomes the group’s “tentative selectee.” The selection is only tentative because the Bureau must consider additional factors, including any petitions to deny, to determine whether the “tentative selectee’s” application is grantable. The Commission tentatively selected KWR by means of a tiebreaker.<sup>10</sup>

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<sup>1</sup> Application File No. 0000167215 (rec. Nov. 9, 2021) (KWR Application).

<sup>2</sup> See *Comparative Consideration of 34 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 23-05 (rel. Jan. 24, 2023) (*Comparative Order*).

<sup>3</sup> FZI, Petition to Deny, Pleading File No. 0000211163 (rec. Feb. 22, 2023) (Petition).

<sup>4</sup> Application File No. 0000166105 (rec. Nov. 3, 2021) (FZI Application).

<sup>5</sup> Ethree Group, Inc. applied to serve Big Pine (Application File No. 0000166738, rec. Dec. 28, 2021). Specialized Educational Broadcasting applied to serve Key West (Application File No. 0000166812, rec. Jan. 19, 2022).

<sup>6</sup> KWR, Opposition to Petition to Deny, Pleading File No. 0000212235 (rec. Mar. 8, 2023) (Opposition); FZI, Reply to Opposition to Petition to Deny, Pleading File No. 0000212374 (rec. Mar. 10, 2023) (Reply).

<sup>7</sup> 47 CFR § 73.3514.

<sup>8</sup> See *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).

<sup>9</sup> 47 CFR § 73.7003. An applicant’s maximum position is established upon close of the relevant filing window. Any changes an applicant makes after that date can decrease, but not enhance, its position.

<sup>10</sup> See *Comparative Order*, para. 44. The initial point system analysis in Group 55 was not determinative because each applicant received the same point tally, *i.e.*, two points each for “diversity of ownership.” *Id.*, para. 43; 47 CFR § 73.7003(b)(2) (awarding points to applicants without an attributable interest in another NCE station serving a portion of the same area). Nor was the first tiebreaker (fewest authorizations) determinative because each applicant certified that it did not hold any existing radio authorizations. See *id.* § 73.7003(c)(1). KWR prevailed in a second

FZI now argues that the Bureau must dismiss the KWR Application for failure to disclose all parties to the application and, in particular, omitting persons with unresolved potential qualifications issues from a 2019 Commission investigation.<sup>11</sup> The investigation concerned allegations that 305, run by brothers Peter L. Stebbins (Peter) and John H. Stebbins (John), together with an individual named John Viera, operated a Low Power FM (LPFM) station at two unauthorized locations in Miami while representing to the Commission that the station was broadcasting from authorized sites at which it had never constructed. 305 surrendered its LPFM license through a letter in which its counsel argued that the matter was now moot. However, the Bureau issued a letter (Miami Letter)<sup>12</sup> stating that the matters raised in the LPFM case were not moot, because they could be relevant to determining qualifications<sup>13</sup> in future broadcast applications by John, Peter, and others with attributable interests in 305, and thus required any such application filed within the next five years to include copies of both the Miami Letter and the preceding Bureau inquiry letter into the LPFM station's operating history (the Miami LOI).<sup>14</sup> This requirement would alert Commission staff and interested parties of potential issues relevant to the applicant's qualifications.

Three members of the Stebbins family were listed in the KWR Application as the officers and directors of KWR (*i.e.*, Bertrand and Diane Stebbins and Fred Stebbins – respectively, the parents and brother of John and Peter).<sup>15</sup> The application did not include (and did not reference) either the Miami Letter or the Miami LOI, as would have been required if John and/or Peter held attributable interests. FZI contends that John and Peter nevertheless are connected to and, in fact, control KWR. First, it alleges that John was listed as an officer of KWR in articles of incorporation filed in 2021 with the State of Florida and a 2022 corporate reinstatement.<sup>16</sup> Second, it alleges that the primary e-mail address and telephone contact number listed on the KWR Application are associated with companies run by Peter.<sup>17</sup> FZI alleges that KWR misrepresented the identity of the parties to the KWR Application in order to circumvent the Miami Letter's disclosure requirement and thereby to conceal potentially disqualifying issues.<sup>18</sup>

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tiebreaker (fewest pending applications) because it had only one pending application whereas FZI had two applications, and the other applicants had more. *See id.* § 73.7003(c)(2); *Comparative Order*, para. 44.

<sup>11</sup> Petition at 2.

<sup>12</sup> *See Michael W. Richards, Esq.*, Letter Order, File No. BLL-20180830AAW (MB Sept. 9, 2019).

<sup>13</sup> *See generally Policy Regarding Character Qualifications in Broadcast Licensing*, Policy Statement and Order, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *further recon. granted in part*, 7 FCC Rcd 6564 (1992).

<sup>14</sup> Specifically, the Miami Letter stated: “we will require 305 and its principals to alert the Commission of this matter *in any such application*. Specifically, 305 (Peter Stebbins, John Stebbins, and John Viera as well as any entity in which any of them holds an interest that is within the scope of the ownership and control disclosure standard set forth in 47 CFR § 1.2112) SHALL SUBMIT a copy of this *Letter Order* and of the July 19, 2019 operational inquiry *with every facilities application--FCC Form 301, 309, 318, 340, or 349--or any assignment of license/transfer of control application--FCC Form 314, 315, or 345--it files with the Commission for a period of five years from the date of this Letter Order.*” Miami Letter at 1 (emphasis added).

<sup>15</sup> The KWR Application does not list John or Peter as officers or directors of KWR.

<sup>16</sup> KWR was incorporated in 2021. Its articles of incorporation filed with the State of Florida listed Bertrand Stebbins as its registered agent, incorporator, and President, John as Vice President, and Fred Stebbins as Secretary. Petition at 2, citing Florida File No. N21000012460. Peter is not mentioned in the KWR corporate filings.

<sup>17</sup> Petition at 5-6.

<sup>18</sup> *Id.* at 2.

KWR responds that it has no connection to 305 and, thus, is not subject to the Miami Letter's requirements.<sup>19</sup> It acknowledges that the three principals of KWR are related to Peter and John but argues that a familial relationship, by itself, does not establish an attributable interest.<sup>20</sup> Rather, it contends that a person has an attributable interest only if their ownership or position is sufficient to exert influence or control over station finances, programming, or personnel, and that neither Peter nor John has any such interest in KWR.<sup>21</sup> According to KWR, Peter simply provides unpaid consulting services to the company, and FZI's allegations of greater involvement are speculative.<sup>22</sup> Although KWR acknowledges that it listed John as a board member in corporate filings with the State of Florida before and after filing the KWR Application with the Commission, it maintains this was a mistake caused by hasty filing and not out of any intent to deceive.<sup>23</sup> It also states that it corrected the error in March 2023 by filing a Florida annual report that substituted Diane Stebbins for John.<sup>24</sup> FZI disputes KWR's claim of mistake and stresses that KWR twice identified John as an officer.<sup>25</sup>

**Discussion.** We grant the Petition and dismiss the KWR Application pursuant to section 73.3566 of the Rules.<sup>26</sup> Applications to construct new NCE stations must disclose all parties to the application. Corporate officers are parties.<sup>27</sup> KWR's articles of incorporation filed with a state government in 2021, approximately two weeks before it filed the KWR Application with the Commission, named John as its Vice President.<sup>28</sup> A corporate reinstatement filed with Florida in October 2022 continues to list John in that position.<sup>29</sup> John's position as a corporate officer is dispositive of his having an attributable interest in

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<sup>19</sup> Opposition at 1. KWR filed its Opposition four days late but requested a waiver of the due date. See 47 CFR §§ 73.3584, 1.45. KWR contends that a waiver would be in the public interest because it would limit the number of issues that might be raised in any appeal. Opposition at 1. FZI opposes the waiver request. Reply at 2. We grant the waiver and consider the Opposition because the information therein provides a more complete record, and we otherwise would likely have issued a letter of inquiry requesting similar information.

<sup>20</sup> Opposition at 1-2.

<sup>21</sup> *Id.* at 2, citing *Pressly Enterprises, LLC*, Memorandum Opinion and Order, 17 FCC Rcd 14079 (2002); *Petroleum V. Nasby Corp.*, Memorandum Opinion and Order, 11 FCC Rcd 3494 (1996); *KTRB Broad. Co.*, Memorandum Opinion and Order, 46 FCC 2d 605 (1974), *recon. denied*, 48 FCC 2d 635 (1974).

<sup>22</sup> Opposition at 3, 5.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 3. Thus, as of March 2023 the ownership information filed with Florida matches that presented in the KWR Application.

<sup>25</sup> Reply at 3. FZI notes that KWR listed John as Vice President both in articles of incorporation and a corporate reinstatement, which Bertrand Stebbins certified to be true and accurate, and only removed John as an officer on March 1, 2023, after FZI raised the matter in the Petition. *Id.*

<sup>26</sup> 47 CFR § 73.3566.

<sup>27</sup> The instructions to the Schedule 340 state that an applicant must identify the "parties to the application." Specifically, with regard to non-stock corporations or other non-stock entities, the instructions explain: "The applicant, the parent and subsidiary entities of the applicant, and the officers, directors, and governing board members of the applicant and its parent and subsidiary entities are considered to be parties to the application."

<sup>28</sup> Florida File No. N21000012460, Article VII (Oct. 25, 2021), reproduced in relevant part as Petition, Exh. D, available in full at <https://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2021%5C1025%5C80531308.tif&documentNumber=N21000012460> (accessed May 8, 2023).

<sup>29</sup> Reply, Exhibit A, Florida Not for Profit Corp. Reinstatement (Oct. 2, 2022).

KWR at the time of filing the application.<sup>30</sup> KWR was, thus, required to include documents associated with the Miami Letter as part of the KWR Application at the time of filing.

We reject KWR's contention that its identification of John as its Vice President was mistaken and, therefore, immaterial.<sup>31</sup> KWR emphasizes that John never voted on any corporate matter, was not an employee of KWR, and had no financial interest in the company.<sup>32</sup> Essentially, it contends that John never really performed any duties as Vice President, that his name was erroneously included on corporate documents, and that it corrected that error by substituting Diane Stebbins in a March 2023 Florida filing.<sup>33</sup> Even assuming *arguendo* that each of these claims is true, the Bureau does not limit its consideration to an applicant's *de facto* control but also considers its *de jure* corporate structure as of the date of application.<sup>34</sup> Two documents KWR filed with Florida, and not contradicted by any other corporate documents pertaining to that time period, reflect that John was an officer of KWR as of November 9, 2021, when the KWR Application was submitted.

The KWR Application, by omitting John, did not accurately reflect KWR's *de jure* corporate structure at the time of filing. KWR's revision of its officers in March 2023 is immaterial to the KWR Application as filed in 2021. The Bureau has previously rejected a suggestion to ignore relevant NCE corporate documents based on alleged inaccuracies.<sup>35</sup> The Bureau will not allow an applicant to "simply disavow its duly adopted corporate articles and Bylaws, claiming extra-legal considerations, in order to avoid adverse legal consequences."<sup>36</sup> To hold otherwise would "establish a dangerous precedent."<sup>37</sup> Given John's position as a corporate officer, the KWR Application was subject to the Miami Letter's requirement to include the Miami Letter and the Miami LOI as part of any FCC facilities application attributable to him, including a Schedule 340 application such as the KWR Application, filed within five years of the Miami Letter.<sup>38</sup> We dismiss the KWR Application for failure to do so. We, thus, need not resolve FZI's other allegations, including the purported role of Peter, whether KWR had any intent to conceal, and whether KWR has the requisite qualifications to hold a broadcast license. As shown below,

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<sup>30</sup> This finding is not dependent on any family relationship between John and other members of the corporation.

<sup>31</sup> We note that the same person, KWR's President Bertrand Stebbins, certified to the truth and accuracy of the Florida corporate documents naming John as Vice President as well as to that of the KWR Application filed with the Commission. The certification in the Commission's KWR Application is under penalty of perjury. The signature on the Florida reinstatement document states that it has the same legal effect as a statement under oath and that on the Articles of Incorporation acknowledges that submission of false information to the Florida Secretary of State is a felony under state law. While KWR asserts that the two Florida documents were erroneous because KWR submitted them hastily, that claim is of dubious credibility given Bertrand Stebbins' signature acknowledging significant potential legal consequences of inaccurate statements made to Florida.

<sup>32</sup> Opposition at 3, 5.

<sup>33</sup> *See id.*

<sup>34</sup> *See Stuart W. Nolan, Jr., Esq.*, Letter Order, 21 FCC Rcd 6155, 6161 (MB 2011) (disqualifying NCE applicant that exceeded foreign ownership limits in governing documents filed with State of Oklahoma despite applicant's claim that the documents did not accurately reflect its corporate functioning). *De jure* structure is particularly relevant in the instant case where the applicant was incorporated only two weeks before the application and, thus, would not be expected to have conducted a lot of business within that time period.

<sup>35</sup> *Id.* at 6161.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> The KWR Application did not include a request for waiver of the Miami Letter's disclosure requirement.

however, such matters might also be relevant to future applications and we, thus, are imposing a new disclosure requirement applying to FCC applications filed in the next ten years by the principals of 305 and KWR or any entity in which any of them hold an interest.

We further note that the defect in the KWR Application is fatal and cannot be cured by a corrective amendment. Section 73.3566(a) of the Rules states: “Applications which are determined to be patently not in accordance with the FCC rules, regulations, or other requirements, unless accompanied by an appropriate request for waiver, will be considered defective and will not be accepted for filing or if inadvertently accepted for filing will be dismissed.”<sup>39</sup> Section 73.3566(b) provides: “If an applicant is requested by the FCC to file any additional documents or information not included in the prescribed application form, a failure to comply with such request will be deemed to render the application defective, and such application will be dismissed.”<sup>40</sup> Because the KWR Application omitted the documents prescribed in the Miami Letter, and did not contemporaneously request a waiver of the Miami Letter, the application is defective and must be dismissed. The Miami Letter explicitly established that the disclosure requirement had to be met at the time of filing by alerting the Commission “in any such application” and through the filing of required documents “with every facilities application.”<sup>41</sup> Removal of John as a corporate officer at a later date and/or a post-filing amendment of the KWR Application to include the documents required by the Miami Letter cannot remedy a failure to provide notice at the time the application was filed. Nor would it serve the same purpose of the Miami Letter’s requirement to provide an alert immediately upon filing. In such circumstances, the original tentative selectee is disqualified, and the applicant with the next highest point/tiebreaker position is named as the new tentative selectee.<sup>42</sup>

FZI is the applicant with the next best position in Group 55 because, as discussed above, all applicants were equivalent in a point system analysis and first tiebreaker but FZI had the fewest (two) attributable applications and is, thus, favored over the remaining applicants in a second tiebreaker.<sup>43</sup> We name FZI the new tentative selectee in Group 55, and accept the FZI Application for filing.<sup>44</sup>

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<sup>39</sup> 47 CFR § 73.3566(a).

<sup>40</sup> *Id.* § 73.3566(b).

<sup>41</sup> *See supra*, note 14.

<sup>42</sup> 47 CFR § 73.7004(d).

<sup>43</sup> *See supra*, note 9; *Comparative Order*, para. 44.

<sup>44</sup> The naming of a new tentative selectee in this proceeding is a routine action consistent with the Bureau’s authority and Commission directives because the Bureau is simply applying the Commission’s existing analysis to the applicants that remain following dismissal of a defective application. *See Comparative Order*, 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. The staff need not refer such matters to the full Commission unless the staff determines that the issues are new or novel, or raise a substantial and material question regarding the award of points. Generally, the staff should refer issues to the Commission where the exclusion or inclusion of challenged or claimed points could alter the outcome in the particular NCE group, or where a new or novel question or substantial and material question of fact otherwise exists.”). *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

We further note that the matters raised in this proceeding dovetail with the disclosure requirements for 305 in the Miami Letter and are potentially relevant to determining the qualifications of KWR and its principals in any future applications they may file. We, therefore, in the ordering clauses below, adopt a new disclosure requirement that builds upon that of the Miami Letter by adding KWR and its principals, and extending the disclosure term from five to ten years.<sup>45</sup>

**Conclusion/Action.** Accordingly, IT IS ORDERED THAT the application of KWR to construct a new NCE station at Key West, FL (File No. 0000167215) IS DISMISSED.

IT IS FURTHER ORDERED THAT the application of Frequency Zero, Inc. (File No. 0000166105) IS TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Stock Island, Florida and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we intend, by public notice, TO DISMISS the mutually exclusive applications of Ethree Group, Inc. (File No. 0000166738) and Specialized Educational Broadcasting (File No. 0000166812) and TO GRANT the application of Frequency Zero, Inc. (File No. 0000166105) CONDITIONED UPON the 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 305 Community Radio, Key West Radio, and the principals of each must alert the Commission of these matters in any application any of them file within ten years from the date of this letter. Specifically, 305 (Peter Stebbins, John Stebbins, and John Viera) and KWR as revised (Bertrand Stebbins, Diane Stebbins, and Fred Stebbins) as well as any entity in which any of them holds an interest that is within the scope of the ownership, control and attribution standards set forth in either 47 CFR § 1.2112 or 47 CFR § 73.3555 SHALL SUBMIT a copy of three documents: (1) this *Letter Order*; (2) a September 9, 2019 *Letter Order* concerning a Miami, FL Low Power FM station licensed to 305 (File No. BLL-20180830AAW); and (3) a July 19, 2019 operational inquiry for that same Miami LPFM station, with every facilities application--Schedule 301, 309, 318, 340, or 349--or any assignment of license/transfer of control application--Schedule 314, 315, or 345--it files with the Commission for a period of ten years from the date of this *Letter Order*.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

cc:

Charles E Keiler  
Ethree Group, Inc.

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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)).

<sup>45</sup> This new disclosure requirement will replace that established in the Miami Letter.

271 NW 53 Court  
Deerfield Beach, FL 33064  
([ckeiler@ethree.us](mailto:ckeiler@ethree.us))

Ryan Williams, Director  
Specialized Educational Broadcasting  
1019 Washington Ave.  
Suite B  
Waco, TX 76701  
([radio@specializedbroadcasting.org](mailto:radio@specializedbroadcasting.org))

305 Community Radio, Inc.  
545 NE 50<sup>th</sup> Terrace  
Miami, FL 33137  
([stebbins.peter@gmail.com](mailto:stebbins.peter@gmail.com))