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In Reply Refer to:

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In re: **NCE MX Group 196**

Centro Cristiano de Vida Eterna San Antonio
New NCE FM Station, Shiner, Texas
Facility ID No. 768082
Application File No. 167134

Texas Public Radio
New NCE FM Station, Gonzales, Texas
Facility ID No. 766260
Application File No. 166683

Centro Cristiano de Vida Eterna San Antonio
New NCE FM Station, Runge, Texas
Facility ID No. 768090
Application File No. 167130

Dear Counsel:

We have before us the referenced application (Application) filed by Centro Cristiano de Vida Eterna San Antonio (CCVESA), which seeks authority to construct a new noncommercial educational FM station at Shiner, Texas,¹ and has been designated the tentative selectee for NCE MX Group 196.²

¹ Application File No. 0000167134 (Application).

² *Threshold Fair Distribution Analysis of 5 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-1166, at 5, para. 11 (MB Nov. 9, 2022) (Fair Distribution Order).

Also before us is a Petition to Deny (Petition) the Application filed by Texas Public Radio (TPR),³ and CCVESA's response to a Letter of Inquiry sent by the Bureau.⁴ For the reasons set forth below, we grant the Petition, rescind our tentative selection of the Application, dismiss the Application, and refer NCE MX Group 196 to the Commission to conduct a point system analysis.⁵

Background. CCVESA filed the Application during the November 2021 filing window for new NCE FM applications.⁶ The Bureau determined that the Application was mutually exclusive with another application filed by CCVESA,⁷ and an application filed by TPR,⁸ and designated the three applications NCE MX Group 196.⁹ The Bureau later determined that the Application was entitled to a fair distribution preference, and designated it the tentative selectee of NCE MX Group 196.¹⁰

TPR timely filed the Petition. Among other things, TPR asserts that Application should be dismissed because CCVESA failed to provide a proper site assurance exhibit.¹¹ TPR notes that the Application lists a tower owned by American Tower Corporation (ATC) but includes contact information for an officer of Vertical Bridge REIT, LLC, a different tower company.¹²

To date, CCVESA has not opposed the Petition or amended the CCVESA-Shiner Application to correct the contact information provided. However, it has responded to an LOI we sent, which requested information regarding whether, at the time it filed the Application, CCVESA had reasonable assurance that the site specified in the Application was available to it.¹³ In the LOI Response, CCVESA indicated that it had not contacted ATC directly but understood that Cody Peters at ATC had been contacted.¹⁴ While the LOI requested "all documents ... in the possession of [CCVESA] and its agents related to the availability of the proposed site," CCVESA submitted no documentation with its LOI Response.

³ Pleading File No. 204985 (filed Dec. 9, 2022) (Petition).

⁴ Letter from Dan J. Alpert, Counsel, Centro Cristiano de Vida Eterna San Antonio, to Tom Hutton, Deputy Division Chief, Law, Audio Division, Media Bureau (dated Jan. 14, 2022) (LOI Response).

⁵ See 47 CFR § 73.7002(b); see also *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7420 (2001) (*NCE Order*).

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 Application File No. 167130.

⁸ Application File No. 166683.

⁹ Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational FM Stations, Public Notice, MB Docket No. 20-343, 36 FCC Rcd 16452 (MB 2021).

¹⁰ *Fair Distribution Order*, DA 22-1166, at 5, para. 14.

¹¹ Petition at 3-4. TPR also alleges that (1) the Application should not have been awarded a fair distribution preference, and (2) CCVESA underreported its existing authorizations in the Application. *Id.* at 5-6. Given our dismissal of the Application on site availability grounds, we need not and do not reach TPR's other allegations.

¹² *Id.* at 3.

¹³ Letter from Albert Shuldiner, Chief, Audio Division, to Martin Guevara, Centro Cristiano de Vida Eterna San Antonio, Application File No. 166134 (dated Nov. 23, 2021).

¹⁴ LOI Response at 1-2.

Discussion. We conclude that the CCVESA-Shiner Application is defective. As TPR notes,¹⁵ because the Application specified a site owned by ATC, CCVESA was required to specify the name of the person contacted about the site, the person's telephone number, and the person's status (*i.e.* owner, agent or authorized representative). CCVESA submitted information regarding an individual employed by an unrelated tower company.¹⁶ To date, CCVESA has not amended the Application to correct this error.

We also find that, based on the record before us, CCVESA lacked reasonable assurance that the site specified in the Application was available at the time it filed the Application. CCVESA has not submitted any evidence that it obtained reasonable assurance of the availability of the site specified in the Application. This site availability defect is non-curable and renders the Application subject to dismissal without an opportunity to amend.¹⁷ Accordingly, we grant the Petition, rescind our initial tentative selection of the Application, and dismiss the Application.

In light of this finding, we conduct a new fair distribution analysis. The remaining two applications in NCE MX Group 196 propose service to different communities in Texas. Texas Public Radio proposes to serve Gonzales. CCVESA proposes to serve Runge (CCVESA-Runge). Each applicant claims eligibility for a fair distribution preference based on first NCE service population totals.¹⁸ TPR claims to provide new first NCE service to 4,175 people, and CCVESA-Runge claims to provide new first NCE service to 3,724 people. The proposals are comparable because neither exceeds the other by at least 5,000 people.¹⁹ Therefore, we consider combined first and second NCE service population totals. TPR would provide a first or second NCE service to 16,542 people, and CCVESA-Runge would provide a first or second NCE service to 18,675 people.²⁰ Because these proposals are also comparable, the fair distribution analysis ends here. Accordingly, because we are unable to designate a tentative selectee under a section 307(b) fair distribution analysis, TPR and CCVESA-Runge will proceed to a point system analysis.

The point system analysis, which is conducted when section 307(b) is not determinative, must be conducted by the Commission, as this analysis is considered a simplified "hearing" for purposes of section 155(c)(1) of the Act.²¹ Accordingly we have referred the matter to the Commission to make a determination under a point system analysis.²²

¹⁵ Petition at 4.

¹⁶ Application at Vertical Bridge Tower Contact Attach.

¹⁷ See *Able Radio Corp.*, Letter Order, 26 FCC Rcd 16161, 16163 (MB 2011); *Radio Delaware, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 8630, 8631, paras. 9-11 (Rev. Bd. 1989).

¹⁸ See Application File Nos. 166683 and 167130, Fair Distribution of Service Section, and associated exhibits. TPR claims that it would provide first NCE service to 4,175 of the 17,649 people encompassed within its 60 dBu contour. CCVESA-Runge claims that it would provide first NCE service to 3,724 of the 18,675 people within its 60 dBu contour. Thus, each applicant would provide first NCE service to at least 10% of the population within its respective 60 dBu contour and to more than 2,000 people.

¹⁹ The applicant proposing to provide service to the greatest number of people will only be awarded a construction permit if it will provide such service to at least 10% of the people within the station's 60 dBu contour *and* to at least 5,000 more people than the next best applicant. See 47 CFR § 73.7002(b).

²⁰ See Application File Nos. 166683 and 167130, Fair Distribution of Service Section, and associated exhibits.

²¹ See 47 CFR § 73.7002(b); see also *NCE Order*, 15 FCC Rcd at 7420.

²² See *Central Florida Educational Foundation, Inc. c/o Joseph E. Dunne, Esq.*, Letter Order, 22 FCC Rcd. 18332, 18334 (MB 2007) (referring the matter to the Commission for consideration where the initial outcome would be

Ordering Clauses. For the reasons discussed above, **IT IS ORDERED** that the Petition to Deny (Pleading File No. 204985) filed by Texas Public Radio on December 9, 2022, **IS GRANTED**.

IT IS FURTHER ORDERED, that the tentative selection of the application of Centro Cristiano de Vida Eterna San Antonio (File No. 167134) for authority to construct a new noncommercial educational FM station at Shineer, Texas, **IS RESCINDED** and the application **IS DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

altered by the potential for a new points analysis). *See also Comparative Consideration of 24 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educ. FM Stations*, Memorandum Opinion and Order, 25 FCC Rcd 12887, 12914 (2010) (“staff should refer only those 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.”).