



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

**October 3, 2023**

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*In Reply Refer to:*  
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In re: **NCE MX Group 152**

**Gallup Public Radio**

New NCE FM, St. Michaels, Arizona  
Facility ID No. 767171  
Application File No. 0000166062

**Good News Broadcasting Network,  
Inc.**

New NCE FM, Gallup, New Mexico  
Facility ID No. 768192  
Application File No. 0000167858

**New Hope Baptist Church - Gallup**

New NCE FM, Gallup, New Mexico  
Facility ID No. 768308  
Application File No. 0000167524

**Petition to Deny**

Dear Counsel and Applicant:

We have before us three mutually exclusive applications filed by Gallup Public Radio (Gallup), Good News Broadcasting Network, Inc. (GNBN), and New Hope Baptist Church – Gallup (NHBC) for construction permits for new noncommercial educational (NCE) FM stations at St. Michaels, Arizona, and Gallup, New Mexico.<sup>1</sup> We also have before us the Petition to Deny the Gallup Application (Petition), filed by GNBN,<sup>2</sup> and related responsive pleadings.<sup>3</sup> For the reasons set forth below, we grant the Petition, dismiss the Gallup Application,<sup>4</sup> and refer NCE MX Group 152 to the Commission to conduct a new point system analysis.<sup>5</sup>

*Background.* Gallup, GNBN, and NHBC filed their respective applications during the 2021 NCE FM filing window.<sup>6</sup> The Media Bureau (Bureau) identified the three applications as NCE MX Group 152.<sup>7</sup> The Gallup Application originally identified St. Michaels, New Mexico, as the community of license. On March 8, 2022, the Bureau dismissed the Gallup Application for failing to comply with section 73.515 of the Rules because there is no St. Michaels in New Mexico.<sup>8</sup> On March 14, 2022, Gallup filed a technical amendment to the Gallup Application to identify the community of license as St. Michaels, Arizona.<sup>9</sup> The Bureau accepted the March Amendment and reinstated the Gallup Application. In the *Second Comparative Order*,<sup>10</sup> the Commission noted that no applicant in NCE MX Group 152

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<sup>1</sup> Application File Nos. 0000166062 (Gallup Application); 0000167868 (GNBN Application); and 0000167524 (NHBC Application).

<sup>2</sup> Pleading File No. 0000192794 (filed June 1, 2022).

<sup>3</sup> Gallup filed an Opposition. Pleading File No. 0000193259 (filed June 13, 2022). GNBN filed a Reply to the Opposition. Pleading File No. 0000193692 (filed June 21, 2022).

<sup>4</sup> Albert Alan David (David) also filed an Informal Objection to the Gallup Application. Pleading File No. 0000185922 (filed Mar. 7, 2022) (Objection). The Objection argued that the Gallup Application should be dismissed on the basis of section 73.3520 of the Commission's rules (Rules). Objection at 1-2 (citing 47 CFR § 73.3520 (Multiple Application Rule)). On March 8, 2022, the Bureau dismissed the Gallup Application, as discussed below, and dismissed the Objection. Albert did not renew his Objection after the Gallup Application was reinstated, and given our action here, we need not consider this pleading.

<sup>5</sup> See 47 CFR § 73.7002(b). The point system analysis, conducted when the section 307(b) analysis is not determinative, is considered a simplified "hearing" for purposes of 47 U.S.C. § 155(c)(1). See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7420 (2001).

<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> *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations; Opens Window to Accept Settlements and Technical Amendments*, Public Notice, 36 FCC Rcd 16452 (MB 2021).

<sup>8</sup> *Actions*, Public Notice, Report No. PN-2-220310-01 (MB Mar. 10, 2022); see also 47 CFR § 73.515.

<sup>9</sup> Gallup Application, Amendment (filed Mar. 14, 2022) (March Amendment).

<sup>10</sup> *Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 22-78 (Oct. 25, 2022) (*Second Comparative Order*).

claimed eligibility for a fair distribution preference, conducted a point system analysis, and identified the Gallup Application as the tentative selectee.<sup>11</sup>

In the Petition, GNBN argues that the Gallup Application should be dismissed on the basis of section 73.3513(a)(3) of the Rules.<sup>12</sup> GNBN notes that the Gallup Application and two subsequent amendments were signed by Rachel J. Kaub (Kaub), who is not identified as an officer or director of Gallup in either the Gallup Application or on the listing for Gallup on the website of the New Mexico Secretary of State (NMSOS).<sup>13</sup> GNBN further argues that the Commission's *Nunc Pro Tunc Public Notice* only permits a dismissed applicant one corrective amendment, and thus Gallup was not permitted to file an additional amendment to correct the violation of the Signature Rule.<sup>14</sup>

Gallup filed an amendment to the Gallup Application on June 13, 2022, which revised the signature field to identify Raymond Calderon (Calderon), President of Gallup's Board of Directors (Gallup Board), as its signatory.<sup>15</sup> In the Opposition, Gallup argues that the Commission has accepted amendments to correct signature deficiencies in applications, and that its amendment resolved the deficiency identified in the Objection.<sup>16</sup> Gallup further states that the Bureau has "granted applicants significant leeway in complying with the [applicant] certification requirement."<sup>17</sup> Gallup also asserts that under the *Procedures Public Notice*<sup>18</sup> and the *Nunc Pro Tunc Public Notice*, an applicant is not prohibited from filing multiple amendments; rather, it is only entitled to *one reinstatement*, and if an application is dismissed again, at that point no further corrective amendments may be filed.<sup>19</sup>

Finally, Gallup argues that Kaub, as Gallup's general manager, was authorized by the Gallup Board to sign the Application, and that the Bureau has accepted signatures from general managers where they were authorized to sign.<sup>20</sup> Gallup states that its Bylaws provide that "the Board of Directors may authorize . . . the General Manager of the Corporation, to . . . execute and deliver any instrument in the

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<sup>11</sup> *Id.* at 18, paras. 76-77. As noted in the *Second Comparative Order*, Gallup was previously identified as the tentative selectee of the group, based on a fair distribution analysis, but Gallup filed a technical amendment on May 31, 2022, withdrawing its fair distribution of service claim. *Id.* at 18, n.77; *see also Threshold Fair Distribution Analysis of 13 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-477 at para. 30 (MB May 2, 2022).

<sup>12</sup> Petition at 1-2 (citing 47 CFR § 73.3513(a)(3) (Signature Rule)).

<sup>13</sup> Petition at 2. *See also* Gallup Application at Certification (signed by Rachel J. Kaub, KGLP Station Manager).

<sup>14</sup> *Id.* at 2-3 (citing *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776 (1984) (*Nunc Pro Tunc Public Notice*)).

<sup>15</sup> *See* Gallup Application, Amendment (filed June 13, 2022) (June Amendment).

<sup>16</sup> Objection at 2-3 (citing *Santa Monica Community College District*, Hearing Designation Order (ASD 1994) (*Santa Monica*)).

<sup>17</sup> *Id.* at 2 (citing *NCE MX Group 439*, Letter Order, 25 FCC Rcd 7376, 7381, n.39 (MB 2010); *New Bohemia Group, Inc.*, Letter Order, 24 FCC Rcd 1357, 1358-59 (MB 2009) (*New Bohemia*)).

<sup>18</sup> *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 1145 (MB 2021) (*Procedures Public Notice*).

<sup>19</sup> Opposition at 3-4.

<sup>20</sup> *Id.* at 4-5 (citing *Union County Broadcasting Co., Inc.*, Letter Order, 22 FCC Rcd 10285 (MB 2007) (*Union County*)).

name of and on behalf of the Corporation.”<sup>21</sup> Gallup further explains that Kaub met with the Gallup Board monthly to discuss the Application, that the Board approved the filings made on its behalf, and delegated to Kaub authority to complete and submit the Application.<sup>22</sup>

In the Reply, GNBN argues that under Gallup’s Bylaws, its General Manager is not an officer of the corporation, and that the Signature Rule does not permit any other type of corporate official, agent, or employee to sign an application regardless of whether the board delegated such signing authority to that person.<sup>23</sup> GNBN also asserts that *New Bohemia* is inapplicable because there, a member of the board of directors signed the application in question whereas here, Kaub is a subordinate, and no Commission precedent exists where a subordinate was permitted to sign an application.<sup>24</sup> GNBN further argues that under the *Nunc Pro Tunc Public Notice*, Gallup is only entitled to one corrective amendment, which must correct all defects, and disputes Gallup’s argument that it was permitted to file an additional corrective amendment—the June Amendment—because the Gallup Application had not been dismissed a second time.<sup>25</sup> Finally, GNBN asserts that because the March Amendment failed to correct every defect in the Gallup Application, the Commission should not have accepted the June Amendment and should instead dismiss the Gallup Application.<sup>26</sup>

*Discussion.* Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),<sup>27</sup> 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.<sup>28</sup>

The Signature Rule requires that an application filed by a corporation—such as Gallup—must be signed by an officer.<sup>29</sup> We reject Gallup’s argument that *New Bohemia* nonetheless permits Kaub to sign the Application. In *New Bohemia*, the application was signed by a director of the organization, and, as the Bureau noted, “the . . . board entrusted the [a]pplication filing to one of its own” and “[i]t would be anomalous to conclude that a board of directors--which has plenary authority to appoint officers and delegate particular functions to such officers--itself lacks the authority to perform those functions.”<sup>30</sup>

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<sup>21</sup> *Id.* at 4-5.

<sup>22</sup> *Id.* at 5. In support of this argument, Gallup provides a copy of its Bylaws, as well as declarations made under penalty of perjury by Kaub and Calderon. *Id.* at Exhs. 1 and 2.

<sup>23</sup> Reply at 1-2.

<sup>24</sup> *Id.* at 2-3.

<sup>25</sup> *Id.* at 4-5 (citing *Nunc Pro Tunc Public Notice* and *Procedures Public Notice*). Because we dismiss the Gallup Application on other grounds, we do not address these specific allegations.

<sup>26</sup> *Id.* at 5-6.

<sup>27</sup> 47 U.S.C. § 309(d).

<sup>28</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>29</sup> See 47 CFR § 73.3513(a)(3); see also *Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705 (1991), and *Central Florida Communications Group, Inc.*, Hearing Designation Order, 6 FCC Rcd 522, 523, para. 3 (MMB 1991).

<sup>30</sup> *New Bohemia*, 24 FCC Rcd at 1359 and n.13.

Here, Kaub is neither an officer nor a director, but an employee of Gallup, and thus *New Bohemia* is inapposite.

We also disagree with Gallup's argument that the *Nunc Pro Tunc Public Notice* permits an applicant to file an amendment to correct a violation of the Signature Rule. In *Rackley*, the Commission reaffirmed that violations of the Signature Rule are not curable, and therefore, not subject to the amendment and reinstatement policy outlined in the *Nunc Pro Tunc Public Notice*.<sup>31</sup> *Rackley* reaffirmed and emphasized that we adhere strictly to the Signature Rule requirements and that the Commission overturned prior cases where it had allowed applicants to amend applications to correct Signature Rule defects.<sup>32</sup> The Application, which did not comply with the Signature Rule at the time it was filed cannot be amended to correct this deficiency, and must therefore, be dismissed.<sup>33</sup>

Eliminating Gallup leaves GNBN and NHBC as the two remaining applicants in NCE MX Group 152 and alters the previous point system analysis. Accordingly, we have referred the matter to the Commission to conduct a new point system analysis and select a new tentative selectee for Group 152.<sup>34</sup>

*Conclusion/Action.* Accordingly, **IT IS ORDERED** that the Petition to Deny filed by Good News Broadcasting Network, Inc., on June 13, 2022 (Pleading File No. 0000193259), **IS GRANTED**.

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<sup>31</sup> See *Frank Rackley, Jr.*, Memorandum Opinion and Order, 35 FCC Rcd 681 (2020) (*Rackley*) (citing *Hardrock Concrete Placement Company*, Memorandum Opinion and Order, 16 FCC Rcd 2593, 2595-96, para. 8 (2001) (“The potential for abuse and uncertainty would be too great were we to accept applications that were not signed by the applicant. An applicant could easily deny making such signatures, and there would be no accountability in such a system.”)).

<sup>32</sup> *Rackley*, 35 FCC Rcd at 684, para. 10 (“the Commission expressly overruled prior cases that allowed applications not signed in accordance with the Commission's Rules to be amended *nunc pro tunc* to comply with the Rules based on equitable considerations”). We note that in *Union County*, the application was initially signed by a general manager, but subsequently amended to be signed by an officer. *Union County*, 22 FCC Rcd at 10288-89. The Bureau, however, erred in not applying *Hardrock* in that case. The *Santa Monica* decision, in which the Audio Division allowed an applicant to amend to correct a signature defect, was released before *Hardrock and Rackley* and the Commission's explicit directive that signature defects cannot be cured.

<sup>33</sup> We acknowledge that the Bureau recently issued an unpublished letter decision that held that violations of the Signature Rule were curable defects. *Gallup Public Radio*, Letter Order, Ref. 1800B3-ATS (MB Nov. 30, 2022). However, that unpublished decision erroneously failed to apply *Rackley* and *Hardrock*. It was therefore erroneous, and we disavow it. Additionally, that decision is now final. See 47 CFR § 1.117(a).

<sup>34</sup> 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 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.”).

**IT IS FURTHER ORDERED** that the application of Gallup Public Radio for a construction permit for a new noncommercial educational FM station at St. Michaels, Arizona (Application File No. 0000166062) **IS DISMISSED.**

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

cc (via electronic mail):

Mr. Alan Albert David  
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