



Federal Communications Commission
Washington, D.C. 20554

October 3, 2023

DA 23-925
In Reply Refer to:
1800B3-ATS
Released

Gallup Public Radio
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In re: **Gallup Public Radio**
New NCE FM, St. Michaels, Arizona
Facility ID No. 767170
Application File No. 0000166060

Informal Objection

Dear Counsel and Objector:

We have before us the application filed by Gallup Public Radio (Gallup) for a construction permit for a new noncommercial educational (NCE) FM station at St. Michaels, Arizona (Application).¹ We also have before us the Informal Objection to the Application (Objection), filed by Albert Alan David,² and related responsive pleadings.³ For the reasons set forth below, we grant the Objection and dismiss the Application.⁴

Background. Gallup filed the Application during the 2021 NCE FM filing window.⁵ The Media Bureau (Bureau) identified the Application as part of MX Group 25.⁶ As a result of technical amendments, the Application is now a singleton.

¹ Application File No. 0000166060.

² Pleading File No. 0000192979 (filed June 6, 2022).

³ Gallup filed a "Reply to Informal Objection," which we will treat as an Opposition. Pleading File No. 0000194227 (filed June 30, 2022). David filed a Reply to the Opposition. Pleading File No. 0000194227 (filed July 16, 2022).

⁴ Triangle Access Broadcasting, Inc. (Triangle) also filed an Informal Objection to the Application. Pleading File No. 0000185125 (filed Feb. 22, 2022). The Bureau dismissed this pleading when it dismissed the Application on March 8, 2022, as discussed below. Subsequently, Triangle filed a "Withdrawal of Informal Objections". Pleading File No. 0000203608 (filed Nov. 15, 2022). Accordingly, we need not consider the arguments raised in Triangle's Informal Objection.

⁵ *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).

The Application originally identified St. Michaels, New Mexico, as the community of license. On March 8, 2022, the Bureau dismissed the Application for failing to comply with section 73.515 of the Commission's rules (Rules) because there is no St. Michaels in New Mexico.⁷ On March 14, 2022, Gallup amended the Application to identify the community of license as St. Michaels, Arizona.⁸

In the Objection, filed on June 6, 2022, David argues that the Application should be dismissed on the basis of section 73.3513(a)(3) of the Rules.⁹ David notes that the Application was signed by Rachel J. Kaub, who is not identified as an officer or director of Gallup in either the Application or on the listing for Gallup on the website of the New Mexico Secretary of State (NMSOS).¹⁰ David further argues that the *Dismissed Singletons Public Notice* and the Commission's *Nunc Pro Tunc Public Notice* only permit 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.¹¹

Gallup filed an amendment to the Application on June 29, 2022, which revised the signature field of the Application to identify Raymond Calderon, President of Gallup's Board of Directors (Gallup Board), as its signatory.¹² 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.¹³ Gallup further states that the Bureau has "granted applicants significant leeway in complying with the [applicant] certification requirement."¹⁴ Gallup also asserts that under the *Procedures Public Notice*¹⁵ 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.¹⁶

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

⁶ *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).

⁷ *Actions*, Public Notice, Report No. PN-2-220310-01 (MB Mar. 10, 2022); *see also* 47 CFR § 73.515.

⁸ Application, Amendment (filed Mar. 14, 2022).

⁹ Objection at 1-2 (citing 47 CFR § 73.3513(a)(3) (Signature Rule)).

¹⁰ Objection at 1-2. *See also* Application at Certification (signed by Rachel J. Kaub, KGLP Station Manager). The Objection includes a screenshot of the NMSOS website listing for Gallup.

¹¹ *Id.* at 1-2 (citing *Media Bureau Dismisses Defective Singleton Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational FM Stations*, Public Notice, 36 FCC Rcd 16718 (MB 2021) (*Dismissed Singletons Public Notice*); *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*)).

¹² *See* Application, Amendment (filed June 29, 2022).

¹³ Objection at 2-3 (citing *Santa Monica Community College District*, Hearing Designation Order (ASD 1994) (*Santa Monica*)).

¹⁴ *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*)).

¹⁵ *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*).

¹⁶ Opposition at 3-4.

they were authorized to sign.¹⁷ 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 name of and on behalf of the Corporation.”¹⁸ 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.¹⁹

In the Reply, David argues that “nowhere [in the *Dismissed Singletons Public Notice*] was it stated that the limitation to one minor curative amendment was *only* applicable if the application was dismissed a second time.”²⁰ David further asserts that the *Nunc Pro Tunc Public Notice* “did not say that multiple curative amendments are acceptable in the absence of a second dismissal,” but instead provides that applicants must review all portions of their dismissed application.²¹ David contends that the *Dismissed Singletons Public Notice* provides that a corrective amendment must correct all the application defects, and that Gallup’s March 14, 2022, amendment failed to do this.²² Finally, David argues that the Signature Rule does not allow an applicant to delegate the authority to sign an application to an employee, and that this instance is distinguishable from *New Bohemia*.²³

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

The Signature Rule requires that an application filed by a corporation—such as Gallup—must be signed by an officer.²⁶ 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

¹⁷ *Id.* at 4-5 (citing *Union County Broadcasting Co., Inc.*, Letter Order, 22 FCC Rcd 10285 (MB 2007) (*Union County*)).

¹⁸ *Id.* at 4-5.

¹⁹ *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.

²⁰ Reply at 1 (emphasis in original).

²¹ *Id.* at 2.

²² *Id.*

²³ *Id.* (stating that in *New Bohemia* the application was signed by a board member, while in the present case it was signed by a subordinate).

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 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).

delegate particular functions to such officers--itself lacks the authority to perform those functions.”²⁷ 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*.²⁸ *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.²⁹ 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.³⁰

Conclusion/Action. Accordingly, **IT IS ORDERED** that the Informal Objection filed by Albert Alan David on June 6, 2022 (Pleading File No. 0000192979), **IS GRANTED**.

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. 0000166060) **IS DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):

Mr. Steven L. White
Triangle Access Broadcasting, Inc. (sent by electronic mail to: steven@triaccess.org)

²⁷ *New Bohemia*, 24 FCC Rcd at 1359 and n.13.

²⁸ 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.”)).

²⁹ *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.

³⁰ 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).