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In re: **NCE MX Group 93**

Optima Enrichment, Inc.
New NCE FM, Delafield, Wisconsin
Facility ID No. 768344
Application File No. 0000167847

Waterloo Christian Radio Corporation
New NCE FM, Ixonia, Wisconsin
Facility ID No. 766001
Application File No. 0000167128

Informal Objection

Dear Applicants and Objector:

We have before us two mutually exclusive applications filed by Optima Enrichment, Inc. (Optima) and Waterloo Christian Radio Corporation (WCRC) for construction permits for new noncommercial educational (NCE) FM stations at Delafield and Ixonia, Wisconsin.¹ We also have before us an Informal Objection (Objection) to the WCRC Application, filed by Albert Adam David (David),² and related responsive pleadings.³ For the reasons set forth below, we deny the Objection and direct Optima and WCRC, the tentative selectees in NCE MX Group 93, to electronically submit, by January 26, 2025, a time-sharing agreement in accordance with section 73.7003(c)(4) of the Commission's rules.⁴

Background. Optima and WCRC filed their respective applications during the 2021 NCE FM filing window.⁵ The Media Bureau identified the Optima and WCRC applications, along with two other applications,⁶ as NCE MX Group 93.⁷ In the *First Comparative Order*, the Commission determined that Optima and WCRC had comparable fair distribution of service claims,⁸ and therefore, analyzed the applications under the point system.⁹ The Commission awarded five points to Optima and WCRC, including three points each as established local applicants.¹⁰ Optima and WCRC proceeded to the tie-breaker analysis, and the Commission ultimately designated Optima the tentative selectee in NCE MX Group 93 based on the third and final tie-breaker – prior NCE applications.¹¹

In the *Sixth Comparative Order*, the Commission determined that Optima was improperly designated the tentative selectee based on the third tie-breaker analysis and rescinded its prior tentative

¹ Application File Nos. 0000167847 (Optima Application); 0000167128 (WCRC Application).

² Pleading File No. 0000245938 (filed June 7, 2024).

³ WCRC filed an Opposition on June 17, 2024. Pleading File No. 0000246322. David filed a Reply to the Opposition on June 19, 2024. Pleading File No. 0000246428.

⁴ See 47 CFR § 73.7003(c)(4).

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).

⁶ See Application File Nos. 0000167074, filed by The Family Radio Network, Inc. (FRN), and 0000166752, filed by Community Public Radio, Inc. (CPR).

⁷ *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).

⁸ See *Comparative Consideration of 27 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 37 FCC Rcd 9869, 9883 (2022) (*First Comparative Order*).

⁹ FRN did not claim a fair distribution preference and was therefore excluded from further analysis. CPR had a comparable fair distribution of service claim, proceeded to the point system analysis, but received fewer points than Optima and WCRC. See *First Comparative Order*, 37 FCC Rcd at 9883-84. The CPR and FRN applications will ultimately be dismissed upon grant of the tentative selectee applications in NCE MX Group 93.

¹⁰ *First Comparative Order*, 37 FCC Rcd at 9883-84.

¹¹ See 47 CFR § 73.7003(c)(3); *First Comparative Order*, 37 FCC Rcd at 9884.

selection of the Optima Application.¹² Because a tie remained between WCRC and Optima, the Commission proceeded to the tie-breaker of last resort – time-sharing. Specifically, the Commission identified both WCRC and Optima as the new tentative selectees of NCE MX Group 93, accepted the two applications for filing, and directed the applicants to submit, within 90 days of the release of the *Sixth Comparative Order*, a voluntary time-sharing agreement compliant with section 73.7003(c)(4) of the Commission’s rules.¹³ In the *Sixth Comparative Order*, the Commission also noted that David had filed an Objection to the WCRC Application.¹⁴ The Commission explained, however, that it does not review objections at the preliminary tentative selectee stage, but would consider the merits of David’s Objection after the WCRC Application is accepted for filing.¹⁵

In his Objection, David asserts that WCRC was not entitled to points as an established local applicant. Specifically, David notes that “the date that the applicant provided for the question as to when they qualified as local was November 8, 2021, the same date that the application was submitted.”¹⁶ David argues that this “demonstrates by their own admission that they have not met the definition of a local applicant for the two years prior to the filing of their application.”¹⁷

In its Opposition, WCRC explains that it mistakenly entered the wrong date, the date it filed the application, in response to the question regarding “established local presence.”¹⁸ WCRC argues that it is evident from the rest of the application that this was a “clearly unintended and erroneous response,”¹⁹ and that it qualifies for points as an established local applicant. Specifically, WCRC states that it explained in its application that it has been the licensee of WULD-LP, Waterloo, Wisconsin, since 2016, and submitted an exhibit to “demonstrate that WCRC’s headquarters from which WULD-LP operates is within the 25 mile radius of the proposed community of license.”²⁰ WCRC also notes that documentation submitted with its LPFM application shows that it was incorporated on October 13, 2013.²¹ Finally, WCRC argues that while its “clerical error is unfortunate, there is no justification for prohibiting a clarifying corrective amendment.”²² On June 18, 2024, WCRC amended its application to clarify that it has been local since October 13, 2013, and provide additional information to support its established local applicant claim.²³

In his Reply, David argues that the fact that WCRC holds a LPFM license does not demonstrate that it qualifies as an established local applicant because an “operator of an LPFM station can apply for a

¹² See *Comparative Consideration of Three Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 24-115, at paras. 15-18 (Oct. 28, 2024) (*Sixth Comparative Order*).

¹³ See 47 CFR §73.7003(c)(4); *Sixth Comparative Order* at paras. 18, 36.

¹⁴ *Sixth Comparative Order* at para. 18, note 60.

¹⁵ *Id.*

¹⁶ Objection at 1.

¹⁷ *Id.* at 2.

¹⁸ Opposition at 2.

¹⁹ *Id.*

²⁰ *Id.* at 1.

²¹ *Id.* at 2.

²² *Id.* at 3.

²³ WCRC Application at “Purpose of Amendment of June 18, 2024.pdf”.

station anywhere in the country.”²⁴ David also argues that WCRC did not, in its initial application, provide “any organizational information about the establishment of the applicant and the duration of time it has been local,” and its amendment to support its comparative claim should not be considered.²⁵

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),²⁶ 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.²⁷

We find that WCRC was properly awarded points as an established local applicant. Specifically, to qualify for the three “established local applicant”²⁸ points, an applicant must certify that it has been local and established in the community to be served continuously for at least two years immediately prior to the application filing.²⁹ To be considered local, a non-governmental applicant must have a physical headquarters, campus, or 75% of its governing board members residing within 25 miles of the reference coordinates of the proposed community of license.³⁰ An applicant claiming points as an “established local applicant” must submit substantiating documentation with its application to illustrate how it qualifies as local and established.³¹ There is, however, flexibility in the type of documentation an applicant may provide.³²

WCRC certified in its application that it qualified as an “established local applicant” and timely submitted documentation to support its claim.³³ Specifically, to demonstrate that it qualifies as local, WCRC submitted a map to illustrate that its headquarters in Waterloo is less than 20 miles from Ixonia, its proposed community of license.³⁴ To verify that it was established locally for at least two years prior to filing the application, WCRC noted that it has been the licensee of WULD-LP, Waterloo, Wisconsin, since 2016,³⁵ and referenced its prior granted LPFM application.³⁶ We find this was sufficient to confirm

²⁴ Reply at 1.

²⁵ *Id.* at 2.

²⁶ 47 U.S.C. § 309(d).

²⁷ 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).

²⁸ See 47 CFR § 73.7000 (defining “established local applicant” and “local applicant”).

²⁹ See *id.* § 73.7003(b)(1).

³⁰ See *id.* § 73.7000; see also *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window*, Public Notice, 36 FCC Rcd 11458, 11465 (2021) (*Procedures Notice*).

³¹ *Procedures Notice*, 36 FCC Rcd at 11465.

³² See, e.g., *First Comparative Order*, 37 FCC Rcd at 9875.

³³ WCRC Application at Point System Factors/Tiebreakers Section, Established Local Applicant question.

³⁴ *Id.* at “Distance from applicant to Community of License.doc” and “Community of LicenseMap (Ixonia).pdf”.

³⁵ WCRC Application at “Attributable Interests.docx” and “Divestiture Commitment.docx”. WCRC pledges to divest WULD-LP prior to commencement of on-air operations of the proposed NCE FM station.

³⁶ WCRC Application at “Educational Qualifications.docx”. WCRC references File No. BNPL-20131114AJH, which contains a copy of its Articles of Incorporation, dated October 13, 2013.

that WCRC qualified for points as an established local applicant.

Moreover, the fact that WCRC initially entered the date it filed its application in response to the “Established Community Presence” question, which directs an applicant to provide the date on which it qualified as local, is irrelevant.³⁷ A response to the “Established Community Presence” question, which is separate and distinct from the “Established Local Applicant” point criterion, is reviewed and analyzed only in the event MX applicants proceed to mandatory/involuntary time-sharing.³⁸ Further, it was evident from WCRC’s “Established Local Applicant” certification, and the information provided to verify its point claim, that WCRC had been local and established for well over two years before filing its application, and therefore, qualified for the three localism points.

Accordingly, we deny the David Objection and affirm the tentative selection of the WCRC Application and Optima Application in NCE MX Group 93.

Conclusion/Action. Accordingly, **IT IS ORDERED** that the Informal Objection filed by Albert Adam David on June 7, 2024 (Pleading File No. 0000245938), **IS DENIED**.

IT IS FURTHER ORDERED that Optima Enrichment, Inc. and Waterloo Christian Radio Corporation, the tentative selectees in NCE MX Group 93, electronically submit, by January 26, 2025, a time-sharing agreement, in accordance with section 73.7003(c)(4) of the Commission’s rules, 47 CFR § 73.7003(c)(4).³⁹

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

³⁷ See WCRC Application at Point System Factors/Tiebreakers Section, Established Community Presence question.

³⁸ See 47 CFR § 73.7003(c)(5)(ii). If a tie among MX applications is not resolved through voluntary time-sharing, the applicants proceed to mandatory/involuntary time-sharing. When assigning hours, the Commission gives preference to the applicant that has been local for the longest uninterrupted period of time. To determine the preference, the Commission reviews applicants’ answers to the “Established Community Presence” question, a component of the Involuntary Time Share Information subsection.

³⁹ If Optima and WCRC are unable to reach a voluntary time-sharing agreement, they will proceed to mandatory time-sharing, in accordance with section 73.7003(c)(5) of the Commission’s rules. See 47 CFR § 73.7003(c)(5).