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In re: **NCE MX Group 95**

Olivet Nazarene University

New NCE, Bloomington, IN
Facility ID No. 765034
File No. 0000165984

**World Federation of Pastors and
Ministers of the Full Gospel, Inc.**

New NCE, Country Squire Lake, IN
Facility ID No. 768120
File No. 0000167179

Lushomo Health Education Centre

New NCE, Ellettsville, IN
Facility ID No. 768891
File No. 0000167818

**Appalachian Educational
Communication Corporation**

New NCE, Ellettsville, IN
Facility ID No. 768389
File No. 0000167447

Community Radio for Hoosiers, Inc.

New NCE, Seymour, IN
Facility ID No. 768880
File No. 0000167634

New Beginnings Movement, Inc.

New NCE, Seymour, IN
Facility ID No. 768892
File No. 0000167516

**Petition to Deny
Informal Objection**

Dear Applicants and Objector,

We have before us six mutually exclusive applications filed by Olivet Nazarene University (ONU), World Federation of Pastors and Ministers of the Full Gospel, Inc. (World Federation), Lushomo Health Education Centre (Lushomo), Appalachian Educational Communication Corporation (Appalachian), Community Radio for Hoosiers Inc. (CRH), and New Beginnings Movement, Inc. (New Beginnings) for construction permits for new noncommercial educational (NCE) FM stations in various communities in Indiana, which the Media Bureau (Bureau) designated as NCE MX Group 95.¹ The

¹ *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*, MB Docket No. 20-343, Public Notice, DA 21-1476 (MB Nov. 29, 2021); *see also* Application File

Bureau identified the New Beginnings Application as the tentative selectee of the group.² We also have before us: 1) the Petition to Deny (Lushomo Petition) the New Beginnings Application filed by Lushomo,³ and 2) the Informal Objection (David Objection) against the World Federation Application filed by Albert Alan David (David).⁴ For the reasons set forth below, we grant the Lushomo Petition, rescind our tentative selection of the New Beginnings Application, deny the David Objection, and identify the World Federation Application as the new tentative selectee of NCE MX Group 95.

Background. The subject applications were filed during the 2021 NCE filing window, which was open from November 2, 2021, until November 9, 2021.⁵ In the *Fourth Fair Distribution Order*, the Bureau conducted a fair distribution analysis pursuant to section 307(b) of the Communications Act of 1934, as amended (Act),⁶ determined that both the World Federation Application and the New Beginnings Application were eligible for a fair distribution preference, and because the New Beginnings Application's proposed second NCE service exceeded the World Federation Application's second NCE service by more than 5,000 people, identified the New Beginnings Application as the tentative selectee of NCE MX Group 95.⁷

In the Petition, Lushomo argues that the population figures in the New Beginnings Application are incorrect. Specifically, Lushomo argues that the total population within the New Beginnings' proposed 60 dBu contour is 28,269, although the New Beginnings Application stated that its 60 dBu contour encompasses 59,306 people.⁸ Lushomo further states that the New Beginnings proposal would provide first noncommercial service to 51 people, as opposed to 0, and second noncommercial service to 1,322, rather than the 59,306 people claimed by New Beginnings, which is 4% of the total population within its 60 dBu contour.⁹ Because these figures are below the required thresholds of providing an aggregated first and second service to at least 2,000 people and 10% of the population within the proposed 60 dBu contour, Lushomo argues that New Beginnings cannot claim a fair distribution

Nos. 0000165984 (ONU Application), 0000167179 (World Federation Application), 0000167818 (Lushomo Application), 0000167447 (Appalachian Application), 0000167634 (CRH Application), and 0000167516 (New Beginnings Application).

² *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 5, para. 12 (MB May 2, 2022) (*Fourth Fair Distribution Order*).

³ Pleading File No. 0000192800 (filed June 1, 2022).

⁴ Pleading File No. 0000185087 (filed Feb. 21, 2022). World Federation filed an Opposition to the David Objection. Pleading File No. 0000189093 (filed Apr. 8, 2022). David filed a Reply to the Opposition. Pleading File No. 0000189433 (filed Apr. 18, 2022). Although the David Objection was filed prior to the adoption of the *Fourth Fair Distribution Order*, the staff did not consider it because World Federation was not identified as the tentative selectee in that order.

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 *Fourth Fair Distribution Order* at 5, para. 12.

⁷ *Id.*

⁸ Lushomo Petition at 2 and Attach.1.

⁹ *Id.*

preference, and the Bureau should rescind its tentative selection of the New Beginnings Application.¹⁰ New Beginnings did not file an opposition to the Petition.¹¹

David Objection. David argues that that World Federation Application contained incorrect population figures for first and second noncommercial service populations, and that, based on 2010 census data, far fewer persons would receive first and second noncommercial service than the application claimed.¹² On March 24, 2022, World Federation amended its application to reflect new population figures, which the Bureau used in the *Fourth Fair Distribution Order*. In its Opposition, World Federation argues that because it has amended its application to provide accurate population numbers, the David Objection is moot.¹³ In the Reply, David acknowledges that World Federation has corrected the errors in its population data, but argues that initial erroneous population figures “still appears to qualify as a willful false statement” and argues that the amendment “does not fully nullify what was committed in the first place.”¹⁴

Discussion. Pursuant to section 309(d) of the Act,¹⁵ 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.¹⁶

The staff has reviewed the population figures in the New Beginnings Application and those provided in the Lushomo Petition, and determined that the data New Beginnings provided was erroneous. Accordingly, we grant the Lushomo Petition and rescind our tentative selection of the New Beginnings Application. We will therefore conduct a new fair distribution analysis using population data that the staff has independently determined to be accurate.¹⁷

NCE MX Group 95 currently consists of six applications to serve different communities in Indiana. ONU proposes to serve Bloomington; World Federation proposes to serve Country Squire Lake; (Lushomo and Appalachian each proposes to serve Ellettsville; and CRH and New Beginnings each proposes to serve Seymour. World Federation and New Beginnings claim that they are each eligible for a fair distribution of service preference based on second NCE service population totals. The other applicants do not. Accordingly, ONU, Lushomo, Appalachian, and CRH are each eliminated.

Using the revised population data from the independent staff engineering analysis, New Beginnings would serve a total population of 28,622 people within its 60 dBu contour, providing first

¹⁰ *Id.*

¹¹ See 47 CFR § 1.45(b) (oppositions must be filed with 10 days of a petition to deny).

¹² David Objection at 1.

¹³ Opposition a 1.

¹⁴ Reply at 1-2 (citing 47 USC § 312(f)(1); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC 4387 (1991), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986)).

¹⁵ 47 U.S.C. § 309(d).

¹⁶ 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).

¹⁷ See *Fourth Fair Distribution Order* at 6, para. 15 and n.35 (staff conducts independent verification of population data when applicants' figures are challenged in informal objection).

NCE service to 71 people, second NCE service to 928 people, and aggregate first/second NCE service to 999 people. Thus, New Beginnings fails to meet the eligibility threshold for a section 307(b) preference because it would not provide aggregated first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people, as required by section 73.7002(b) of the Commission's rules.¹⁸ Accordingly, New Beginnings is eliminated. World Federation would provide a first or second NCE service to 6,293 people (1,475 first service and 4,818 second service).¹⁹ Thus, World Federation is the new tentative selectee for NCE MX Group 95.

Finally, we reject David's suggestion that World Federation should be sanctioned for providing erroneous population figures.²⁰ David cites to no instance where the Bureau has sanctioned an NCE applicant for providing incorrect population data. Moreover, there is no prohibition against a party amending its application to *reduce* its comparative standing.²¹ To the contrary, under section 1.65 of the Commission's rules,²² and as stated in the *NCE Filing Procedures Public Notice*, following the application filing deadline, "each applicant must continue to maintain the accuracy and completeness of the information in its application. Each applicant must notify the Commission, by electronically filing an amendment, of any substantial change that may be of decisional significance to the application."²³ Accordingly, we deny the David Objection.

Conclusion/Action. Accordingly, **IT IS ORDERED** that the Petition to Deny filed on April 23, 2022, by Lushomo Health Education Centre **IS GRANTED**.

¹⁸ See 47 CFR § 73.7002(b). As noted above, the Lushomo Petition provides the following population data: the total population within the New Beginnings' proposed 60 dBu contour is 28,269 people, first noncommercial service to 51 people, second noncommercial service to 1,322 people, and aggregate first/second service to 1,373 people, which is 4% of the total population within its 60 dBu contour. Lushomo Petition at 2 and Attach. 1. Thus, were we to use those figures, we would still find that New Beginnings does not meet the requirements of section 73.7002(b).

¹⁹ See World Federation Application, Fair Distribution of Service Section, and associated exhibits. World Federation's 60 dBu contour encompasses 61,471 people, and its claimed aggregated first and second NCE service is 6,293 people. Thus, World Federation would provide an aggregated first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

²⁰ We generally do not consider objections at this stage, but rather, review the merits of any objection if/when the subject application becomes accepted for filing. However, because the David Objection to the World Federation Application relates to the accuracy of the section 307(b) fair distribution analysis, we consider it herein. See *Fourth Fair Distribution Order* at n.35.

²¹ Compare *Comparative Consideration of 52 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window*, Memorandum Opinion and Order, 25 FCC Rcd 8793, 8799 (2010) (finding that applicant's post-filing window amendment was a prohibited attempt to enhance where the amendment claimed, for the first time, eligibility for a fair distribution preference); *Threshold Fair Distribution Analysis of 28 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in October 2007 Window*, Memorandum Opinion and Order, 24 FCC Rcd 12390, 12394-12395 (MB 2009) (finding that an applicant's amendment was a prohibited attempt to enhance its comparative position when the initial application erroneously used population data from a different community than that which applicant proposed to serve).

²² See 47 CFR § 1.65 (substantial and significant changes in information furnished by applicants to the Commission).

²³ *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window*, DA 21-885, at 11 and n. 68 (MB July 23, 2021) (*NCE Filing Procedures Public Notice*). Additionally, an applicant that subsequently makes engineering changes that would diminish its fair distribution position must amend its application to reflect that diminished position. See 47 CFR §§ 1.65 and 73.7003(e).

IT IS FURTHER ORDERED, that the tentative selection of the application of New Beginnings Movement, Inc. (Application File No. 0000167516) for a construction permit for a NCE FM station in Seymour, Indiana, **IS RESCINDED**.

IT IS FURTHER ORDERED that the Informal Objection filed on February 21, 2022, by Albert Alan David **IS DENIED**.

IT IS FURTHER ORDERED, that the Application filed by World Federation of Pastors and Ministers of the Full Gospel, Inc. (Application File No. 0000167179) is **TENTATIVELY SELECTED** to be awarded a construction permit for a new NCE FM station in Country Squire Lake, Indiana, 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, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, **TO DISMISS** the mutually exclusive applications of Olivet Nazarene University (Application File No. 0000165984), Lushomo Health Education Centre (Application File No. 0000167818), Appalachian Educational Communication Corporation (File No. 0000167447), Community Radio for Hoosiers Inc. (Application File No. 167634), New Beginnings Movement, Inc. (Application File No. 0000167516), and **TO GRANT** the application of World Federation of Pastors and Ministers of the Full Gospel, Inc. (Application File No. 0000167179) **CONDITIONED UPON** that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

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