



Federal Communications Commission
Washington, D.C. 20554

January 9, 2023

In Reply Refer To:
1800B3-ALV

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In re:

NCE MX Group 89

Northern Illinois University
New NCE (FM), Galena, IL
Facility ID No. 767404
Application File No. 0000166990

VCY America, Inc.
New NCE (FM), Mineral Point, WI
Facility ID No. 768507
Application File No. 0000167869

Informal Objection; Petition to Deny

Dear Applicants, Counsel, and Objector:

We have before us two mutually exclusive (MX) applications filed by Northern Illinois University (NIL)¹ and VCY America, Inc. (VCY)² for construction permits for new noncommercial educational (NCE) FM stations in different communities in Illinois and Wisconsin, which the Media

¹ See Application File No. 0000166990 (NIL Application).

² See Application File No. 0000167869 (VCY Application).

Bureau (Bureau) designated as NCE MX Group 89.³ The Commission identified the NIL Application as the tentative selectee of the group.⁴ We also have before us an Informal Objection (Objection) and Petition to Deny (Petition) the NIL Application, filed by Albert Adam David (David) and VCY, respectively.⁵ For the reasons set forth below, we deny the Objection and Petition and grant the NIL Application.

Background. The subject applications were filed during the November 2021, NCE FM filing window.⁶ In the October 25, 2022, *Comparative Consideration Order*, the Commission conducted a point system analysis⁷ to compare the NIL Application and VCY Application.⁸ The Commission awarded NIL a total of five points — three points as an established local applicant and two points for diversity of ownership. It awarded VCY a total of two points – all under the best technical proposal criterion.⁹ Accordingly, the Commission identified NIL as the tentative selectee in Group 89.¹⁰ In the *Comparative Consideration Order*, the Commission also noted that on January 27, 2022, David filed an Objection to the NIL Application, but explained that it would not review and consider the Objection before the NIL Application was accepted for filing.¹¹ On October 25, 2022, the Commission accepted the NIL Application for filing and established a 30-day period for filing petitions to deny.¹²

On November 23, 2022, VCY timely filed its Petition. The VCY Petition and David Objection raise the identical argument. Specifically, David and VCY assert that NIL does not qualify for points as an established local applicant because NIL is not local to Galena, its proposed community of license.¹³

³ *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).

⁴ *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, at paras. 64-65 (Oct. 25, 2022) (*Comparative Consideration Order*).

⁵ See David Objection, Pleading File No. 182183 (filed January 27, 2022); VCY Petition, Pleading File No. 204224 (filed November 23, 2022). On December 22, 2022, NIL filed a Consolidated Reply to Petition to Deny (Reply).

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 See 47 CFR § 73.7003. The point system analysis, conducted when Section 307(b) is not determinative, is considered a simplified “hearing” for purposes of 47 U.S.C. § 155(c)(1).

⁸ Because neither applicant claimed a fair distribution preference, the Commission proceeded directly to the point system analysis.

⁹ See *Comparative Consideration Order* at para. 65.

¹⁰ *Id.*

¹¹ *Id.* at para. 65, note 73 (clarifying that “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.”). The Commission also delegated to the Bureau staff “authority to act on any routine matter that may be raised, including whether the applicant is eligible, as certified, for the points awarded herein, and whether the application complies with all relevant Commission rules and policies.” *Id.* at para. 102.

¹² *Id.* at para. 123.

¹³ See David Objection at 1-2 (arguing that NIL does not qualify as local because its main and satellite campuses are over 25 miles from Galena, none of its trustees reside within 25 miles of Galena, and “nothing that could be said to be within Northern Illinois University’s ‘area of jurisdiction’ are within 25 miles of the proposed community of license or proposed transmitter site.”).

Accordingly, VCY argues that the NIL Application should be dismissed or denied. In its Reply, NIL asserts that it is a State of Illinois governmental entity, and is therefore, “considered an ‘established local applicant’ throughout the State of Illinois” and that the “Petitioners have not submitted any evidence to challenge or rebut NIL’s status as a governmental entity.”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

To qualify for the three points as an “established local applicant,” an applicant must demonstrate that it has been local and established in the community to be served continuously for at least two years immediately prior to filing the application.¹⁷ 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.¹⁸ A governmental unit, however, is considered local within its jurisdictional boundaries.¹⁹ For example, as the Commission clarified in the *Comparative Consideration Order*, “a state university is considered local throughout the state.”²⁰ Accordingly, NIL, a state university established in 1895, is considered local throughout its entire state of Illinois. We find that NIL, therefore, qualifies as an established local applicant, and the Commission correctly awarded NIL points under this criterion.

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED** that the Informal Objection, filed by Albert Adam David on January 27, 2022, and the Petition to Deny, filed by VCY America, Inc. on November 23, 2022, **ARE DENIED**.

IT IS FURTHER ORDERED that the Application filed by Northern Illinois University (File No. 0000166990) for a construction permit for a new NCE FM station in Galena, Illinois, **IS GRANTED CONDITIONED UPON** that selectee’s compliance with section 73.7005 of the Commission’s rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

¹⁴ Reply at 2.

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 47 CFR §§ 73.7000 and 73.7003(b)(1); see also *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 11458 (MB 2021).

¹⁸ See 47 CFR §73.7000 (defining “local applicant”).

¹⁹ *Id.*

²⁰ *Comparative Consideration Order* at para. 9, note 5 (also explaining that “a state government is considered local throughout the state; a City Board of Education is considered local through the city”).

IT IS FURTHER ORDERED that the mutually exclusive application of VCY America, Inc. (File No. 0000167869) **IS DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau