



Federal Communications Commission
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Calvary Chapel Morris Hills
c/o James Keavney
158 W. Clinton Street
Dover, NJ 07801
(sent by electronic mail to: ccmhpastor@gmail.com)

Casa de Destino
c/o Manuel Pimentel
PO Box 6172
Bridgewater, NJ 08844
(sent by electronic mail to: contact@casadestino.com)

Redeemer Broadcasting, Inc.
c/o Kenneth Manri
10000 Lincoln Drive East
Suite 201-335
Marlton, NJ 08053
(sent by electronic mail to: kenmanri@comcast.net)

Transmission Communications Network
c/o Tony Johnson
41 Seymour Ave., Apt. 1
Newark, NJ 07108
(sent by electronic mail to: tcommunicationsnetwork@gmail.com)

Cantico Nuevo Ministry Inc.
c/o Erick Salgado
651 Marshall Street
Elizabeth, NJ 07206
(sent by electronic mail to: ericksalgado1430@hotmail.com)

In re: **NCE MX Group 145**

Calvary Chapel Morris Hills
New NCE FM, Bernardsville, NJ
Facility ID No. 767773
Application File No. 0000167028

Casa de Destino
New NCE FM, Bernardsville, NJ
Facility ID No. 766626
Application File No. 0000167880

Redeemer Broadcasting, Inc.
New NCE FM, Mendham, NJ
Facility ID No. 768329
Application File No. 0000167759

**Transmission Communications
Network**
New NCE FM, Millington, NJ
Facility ID No. 768407
Application File No. 0000166781

Cantico Nuevo Ministry Inc.
New NCE FM, Watchung, NJ
Facility ID No. 767076
Application File No. 0000165805

Informal Objection

Dear Applicants,

We have before us five mutually exclusive (MX) applications filed by Calvary Chapel Morris Hills (CCMH), Casa de Destino (CDD), Redeemer Broadcasting, Inc. (RBI), Transmission Communications Network (TCN), and Cantico Nuevo Ministry, Inc. (CNM) for construction permits for new noncommercial educational (NCE) FM stations in various communities in New Jersey, which the Media Bureau (Bureau) designated as NCE MX Group 145.¹ The Commission identified the CCMH Application as the tentative selectee of the group.² We also have before us the Informal Objection (Objection) to the CCMH Application filed by RBI³ and a related responsive pleading.⁴ For the reasons set forth below, we deny the RBI Objection, grant the CCMH Application, and dismiss the CDD Application,⁵ the RBI Application, the TCN Application, and CNM Application.⁶

¹ *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*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 16452 (MB 2021); *see also* Application File Nos. 0000167028 (CCMH Application), 0000167880 (CDD Application), 0000166759 (RBI Application), 0000166781 (TCN Application), and 0000165805 (CNM Application).

² *Comparative Consideration of 34 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 23-5 at *18-19, paras. 69-70 (Jan. 24, 2023) (*Third Comparative Order*).

³ Pleading File No. 0000179137 (filed Jan. 7, 2022) (RBI Objection).

⁴ CCMH filed an Opposition to the Objection. Pleading File No. 0000181682 (filed Jan. 27, 2022). RBI did not file a Reply as of the date of this letter.

⁵ Albert Alan David filed an Informal Objection to the CDD Application. Pleading File No. 0000184677 (filed Feb. 10, 2022). Because we are dismissing that application as a non-tentative selectee, we need not consider this pleading and dismiss it as moot.

⁶ In the *Third Comparative Order*, the Commission directed Bureau staff to “consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of the tentatively selected application would serve the public interest.” *Third Comparative Order* at *26, para. 108. The Commission delegated authority to the Bureau staff “to act on any routine matter that may be raised, including

Background. The subject applications were filed during the November 2021 NCE FM filing window.⁷ In the *Third Comparative Order*, the Commission conducted a fair distribution analysis pursuant to section 307(b) of the Communications Act of 1934, as amended (Act), in which it eliminated the TCN Application and the CNM Application because each did not claim a fair distribution preference, and eliminated the CDD application because it failed to timely provide sufficient documentation to support its fair distribution claim.⁸ The Commission determined that the CCMH Application and the RBI Application had comparable fair distribution claims,⁹ and the CCMH Application and the RBI Application proceeded to a point system analysis.¹⁰ The Commission ultimately identified the CCMH Application as the tentative selectee of NCE MX Group 145.¹¹ The Commission further noted it would address the RBI Objection after the CCMH Application was accepted for filing.¹²

In the Objection, RBI argues that the CCMH Application should be dismissed because it failed to provide a showing demonstrating compliance with section 73.525 of the Commission's rules (rules) with regard to two television stations operating on Channel 6.¹³ RBI notes that although CCMH amended its application to include this showing, it only did so after the close of the filing window, and therefore the CCMH Application was not complete at the time of filing.¹⁴ In the Opposition, CCMH argues that under Commission policy, technical defects in an application can be cured while an application is pending.¹⁵ CCMH further notes that the Commission has never held that failure to comply with section 73.525 is a non-curable defect.¹⁶

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended,¹⁷ 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.¹⁸

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 *26, para. 108.

⁷ *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).

⁸ *Third Comparative Order* at *18, para. 69.

⁹ *Id.* The two proposals are considered comparable if neither exceeds the other by at least 5,000 people.

¹⁰ *Id.*

¹¹ *Id.* at *18-19, para. 70.

¹² *Id.* at *19, n.78.

¹³ Objection at 1; *see also* 47 CFR § 73.525.

¹⁴ Objection at 1-2. *See also* CCMH Application, Amendment at Attach. “Bernardsville amendment Channel 6 Report-121921.pdf” (filed Dec. 22, 2021).

¹⁵ Opposition at 1-2.

¹⁶ *Id.* at 3-4.

¹⁷ 47 U.S.C. § 309(d).

¹⁸ *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).

Section 73.525(c) of the rules specifies that applicants for new NCE FM stations must submit a showing demonstrating compliance with the spacing requirements of section 73.525.¹⁹ The staff has independently reviewed the Amended CCMH Application and determined that the showing complies with section 73.525(c).²⁰ RBI cites to no authority that the failure to provide a section 73.525 showing is a non-curative defect.²¹ Accordingly, we find that dismissal of the CCMH Application is not warranted. We thus deny the Objection, grant the CCMH Application, and dismiss the mutually exclusive CDD Application, RBI Application, TCN Application, and CNM Application.

Conclusion/Action. For the reasons set forth above, **IT IS ORDERED** that the Informal Objection filed by Redeemer Broadcasting, Inc., on January 7, 2022 (Pleading File No. 0000179137), **IS DENIED.**

IT IS FURTHER ORDERED that the Application filed by Calvary Chapel Morris Hills (Application File No. 0000167028) for a construction permit for a new NCE FM station in Bernardsville, New Jersey, **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, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations, and **PROVIDED THAT**, Calvary Chapel Morris Hills must surrender or otherwise divest itself of its license for LPFM station WCFT-LP, Dover, New Jersey prior to commencement of program tests of the full service NCE FM station.

IT IS FURTHER ORDERED that the mutually exclusive application of Casa de Destino (Application File No. 0000167880) **IS DISMISSED.**

IT IS FURTHER ORDERED that the mutually exclusive application of Redeemer Broadcasting, Inc. (Application File No. 0000167759) **IS DISMISSED.**

IT IS FURTHER ORDERED that the mutually exclusive application of Transmission Communications Network (Application File No. 0000166781) **IS DISMISSED.**

IT IS FURTHER ORDERED that the mutually exclusive application of Cantico Nuevo Ministry Inc. (Application File No. 0000165805) **IS DISMISSED.**

¹⁹ See 47 CFR § 73.525(c).

²⁰ See Amended CCMH Application.

²¹ Compare *Christian Charities Deliverance Church et. al.*, Memorandum Opinion and Order, 30 FCC Rcd 10548 (2015) (affirming dismissal of LPFM applications that violated section 73.807 of the rules (minimum distance separations) without opportunity to cure, because section 73.870(c) explicitly provided that no curative amendments would be permitted for such violations). Thus, had the Bureau dismissed the CCMH Application for failing to comply with section 73.525(c), CCMH would have been entitled to file a curative amendment correcting that deficiency. Dismissed applicants are permitted to submit one minor modification amendment to cure certain application deficiencies. See 47 CFR § 73.3522(a)(2); *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776 (1984).

IT IS FURTHER ORDERED that the Informal Objection, filed by Albert Adam David on February 10, 2022 (Pleading File No. 0000184677) **IS DISMISSED AS MOOT.**

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):

Travis J. Andring, Esq. (andring@fhhlaw.com)
(Legal Representative for Calvary Chapel Morris Hills)

Dan J. Alpert, Esq. (dja@commlaw.tv)
(Legal Representative for Casa de Destino)

Albert Adam David
(sent by electronic mail to: albert.a.david@hotmail.com)