



**Federal Communications Commission**  
Washington, D.C. 20554

**November 30, 2022**

*In Reply Refer to:*  
1800B3-ATS

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In re: **Gallup Public Radio**  
New NCE, Black Rock, New Mexico  
Facility ID No. 767164  
Application File No. 0000166063

New NCE, Zuni Pueblo, New Mexico  
Facility ID No. 767163  
Application File No. 0000166066

New NCE, Ganado, Arizona  
Facility ID No. 767579  
Application File No. 0000166068

New NCE, Burnside, Arizona  
Facility ID No. 767582  
Application File No. 0000166069

**Informal Objections**

Dear Applicant, Objector and Counsel:

We have before us four applications filed by Gallup Public Radio (Gallup) for construction permits for new noncommercial educational (NCE) FM stations at Black Rock, New Mexico;<sup>1</sup> Zuni Pueblo, New Mexico;<sup>2</sup> Ganado, Arizona,<sup>3</sup> and Burnside, Arizona<sup>4</sup> (collectively, Applications). We also have before us: 1) the Informal Objection and Supplement filed by Albert Alan David (David) against the

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<sup>1</sup> Application File No. 0000166063 (Black Rock Application).

<sup>2</sup> Application File No. 0000166066 (Zuni Pueblo Application).

<sup>3</sup> Application File No. 0000166068 (Ganado Application).

<sup>4</sup> Application File No. 0000166069 (Burnside Application).

Zuni Pueblo Application;<sup>5</sup> 2) the Informal Objection filed by David against the Black Rock Application, the Burnside Application, the Ganado Application, and the Zuni Pueblo Application;<sup>6</sup> and 3) related responsive pleadings.<sup>7</sup> For the reasons set forth below, we deny the David Zuni Objection and the David Joint Objection and grant the Applications.<sup>8</sup>

*Background.* Gallup filed the Applications during the 2021 NCE Filing Window.<sup>9</sup> The Media Bureau (Bureau) determined that the Black Rock Application, the Ganado Application and the Burnside Application were singletons, and identified the Zuni Pueblo Application as part of MX Group 148.<sup>10</sup> Through technical amendments, the Zuni Pueblo Application is now also a singleton.

The Zuni Pueblo Application originally identified Black Rock, New Mexico, as its community of license, the same community of license as the Black Rock Application. The Burnside Application originally identified Ganado, Arizona as its community of license, the same community of license as the Ganado Application. The First Triangle Objection argued that that the Zuni Pueblo Application and the Burnside Application should be dismissed on the basis of section 73.3520 of the Commission's rules (Rules) because they propose to serve the same communities as other applications, specifically the Black Rock Application and the Ganado Application, respectively.<sup>11</sup> On December 15, 2021, Gallup amended the Zuni Pueblo Application to identify Zuni Pueblo instead of Black Rock as the community of license,<sup>12</sup> and amended the Burnside Application to identify Burnside, Arizona, as the community of license.<sup>13</sup>

David then filed the Zuni Pueblo Objection, in which he argues that the Zuni Pueblo Application should be still dismissed on the basis of the Multiple Application Rule.<sup>14</sup> David argues that the

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<sup>5</sup> Pleading File Nos. 0000186548 (filed Mar. 12, 2022) (David Zuni Objection) and 0000189321 (filed Apr. 13, 2022) (David Zuni Pueblo Supplement).

<sup>6</sup> Pleading File Nos. 0000192980, 0000192981, 0000192982, and 0000192983 (filed June 6, 2022) (David Joint Objection).

<sup>7</sup> Gallup filed a "Reply to Informal Objections" in response to the David Joint Objection, which we will treat as an opposition (Pleading File Nos. 194219, 194221, 194222, and 194224 (filed June 30, 2022) (Opposition).

<sup>8</sup> We also have on file an Informal Objection (Pleading Nos. 0000176814, 0000176815, and 0000176816 (filed Dec. 6, 2022) (First Triangle Objection)) and the "Informal Objection and Supplement" (Pleading Nos. 0000185122, 0000185123, and 0000185124 (filed Feb 22, 2022)). These pleadings requested dismissal of the Second Zuni Pueblo Application, and the Burnside Application. On November 15, 2022, Triangle filed a "Withdrawal of Informal Objections" in which it withdrew these pleadings. *See* Pleading Nos. 0000203603, 0000203606, and 0000203607 (filed Nov 15, 2022). We grant Triangle's withdrawal request and dismiss Triangle's informal objections.

<sup>9</sup> *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, DA 21-1362 (MB July 23, 2021).

<sup>10</sup> *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, DA 21-1476 (MB Nov. 29, 2021).

<sup>11</sup> First Triangle Objection at 1-2 (citing 47 CFR § 73.3520 ("Where there is one application for new or additional facilities pending, no other application for new or additional facilities for a station of the same class to serve the same community may be filed by the same applicant, or successor or assignee, or on behalf of, or for the benefit of the original parties in interest. Multiple applications may not be filed simultaneously.")(Multiple Application Rule)).

<sup>12</sup> Zuni Pueblo Application, Amendment (filed Dec. 15, 2021).

<sup>13</sup> Burnside Application, Amendment (filed Dec, 15, 2021).

<sup>14</sup> David Zuni Pueblo Objection at 1-2.

application should be dismissed notwithstanding the amendment filed to change the community of license because the filing of a duplicate application itself is prohibited by the Multiple Application Rule,<sup>15</sup> and the amended Zuni Pueblo Application proposes the same transmitter site as the original application, “making the amended change a trivial act that does nothing to address the abuses that [the Multiple Application Rule] is intended to prevent.”<sup>16</sup> David also argues that multiple applications “would give the entity submitting multiple applications an advantage over other applicants” who are mutually exclusive which could be “blocked from modifying their application to . . . resolve the conflict,” adding that “[s]uch tactics run counter to the Commission’s goals of diversity and competition.”<sup>17</sup> In the David Zuni Pueblo Supplement, David further argues that section 73.1001(a) of the Rules provides that section 73.3520 applies to noncommercial services.<sup>18</sup>

In the David Joint Objection, David argues that the Black Rock Application, the Burnside Application, the Ganado Application, and the Zuni Pueblo Application should be dismissed on the basis of section 73.3513(a)(3) of the Rules.<sup>19</sup> David notes that these applications were signed by Rachel J. Kaub, who is not identified as an officer or director of Gallup in either the applications or on the listing for Gallup on the New Mexico Secretary of State (NMSOS).<sup>20</sup> The David Joint Objection includes a screenshot of the NMSOS website listing for Gallup.

Gallup filed amendments on June 29, 2022, to the Black Rock Application, the Burnside Application, the Ganado Application, and the Zuni Pueblo Application.<sup>21</sup> These amendments revised the signature fields of the Applications to identify Raymond Calderon as the signatory of each application. In the Opposition, Gallup argues that the Commission has accepted amendment to correct signature deficiencies in applications, and that its amendments resolve the deficiencies identified in the David Joint Objection.<sup>22</sup>

*Discussion.* Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),<sup>23</sup> 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.<sup>24</sup>

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<sup>15</sup> *Id.* at 1.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.*

<sup>18</sup> David Zuni Pueblo Supplement at 1 (citing 47 CFR § 73.1001(a)).

<sup>19</sup> David Joint Objection at 1-2 (citing 47 CFR § 73.3513(a)(3) (Signature Rule)).

<sup>20</sup> David Joint Objection at 1-2.

<sup>21</sup> See Black Rock Application, Amendment (filed Jun 29, 2022); Burnside Application, Amendment (filed June 29, 2022); Ganado Application, Amendment (filed June 29, 2022); and Zuni Pueblo Application, Amendment (filed June 29, 2022).

<sup>22</sup> Objection at 2-3. Gallup also argues that Kaub was authorized by Gallup’s board of directors to sign the Applications, and that the Bureau has accepted signatures from general managers where they were authorized to do so. Objection at 4-5. In light of our finding below that the Applications are now unquestionably in compliance with the Signature Rule, we need not address this issue.

<sup>23</sup> 47 U.S.C. § 309(d).

<sup>24</sup> 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

Multiple Application Rule. The Commission has held that the Multiple Application Rule is not applicable to applications for new NCE stations.<sup>25</sup> In *Open Media*, the Commission unambiguously stated that “[section] 73.3520 is premised on there being a limit to the number of stations which may be owned by any one licensee in the same community. However, since the multiple ownership rules do not apply to NCE–FM operations, neither [applicant] is precluded from owning and operating more than one NCE–FM facility in the market. Thus, it follows that each [applicant] may have more than one application pending at the same time for a given market.”<sup>26</sup> We also reject David’s argument that the Multiple Application Rule applies to NCE stations by virtue of section 73.1001(a). Section 73.1001(a) was in effect when the Commission issued its holding in *Open Media*,<sup>27</sup> but the Commission nonetheless held that the Multiple Application Rule was inapplicable to applicants for new NCE stations. Accordingly, the Zuni Pueblo Application did not violate the Multiple Application Rule.

We also reject David’s argument that enforcement of the Multiple Application Rule would be beneficial to mutually exclusive applicants and further the Commission’s goals of competition and diversity. In this situation, all the Applications are singletons and not prejudicial to other applicants. Additionally, the Multiple Application Rule reflects the Commission’s intent to expedite its processing procedures “by avoiding the disruption of having two inconsistent applications contemporaneously being studied by the staff’ when only one can be granted.”<sup>28</sup> The Commission has never held, and David cites to no authority, that the goal of this rule was to promote competition and diversity. The Commission did not address the Multiple Application Rule in the rulemaking procedures adopting the current NCE comparative point system.<sup>29</sup> Moreover, the Commission has implemented other policies to achieve these important goals, such as the adoption of a ten application cap for the 2007 and 2021 NCE filing windows.<sup>30</sup> Accordingly, we deny the David Zuni Objection.

Signature Violations. The Signature Rule requires that an application filed by a corporation must be signed an officer.<sup>31</sup> The Commission has held that, as long as an application is “substantially

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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).

<sup>25</sup> *Open Media Corporation*, Memorandum Opinion and Order, 8 FCC Rcd 4070, 4073, para. 16 (1993).

<sup>26</sup> *Id.*

<sup>27</sup> See 43 Fed Reg 32781 (July 28, 1978).

<sup>28</sup> *WGBH Education Foundation*, Letter Order, DA 22-138 at 5 (MB 2022) (citing *Radio Representatives, Inc.*, Hearing Designation Order, 5 FCC Rcd 1894, 1896, para. 16 (1990)).

<sup>29</sup> See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Notice of Proposed Rulemaking, 10 FCC Rcd 2877 (1995), Further Notice of Proposed Rulemaking, 13 FCC Rcd 21167 (1998), Report and Order, 15 FCC Rcd 7386 (2000), *vacated in part on other grounds sub nom., National Public Radio v. FCC*, 254 F.3d 226 (D.C. Cir. 2001), *clarified*, Memorandum Opinion and Order, 16 FCC Rcd 5074 (2001) (*NCE MO&O*), *Erratum*, 16 FCC Rcd 10549, *recon. denied*, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002), *aff’d sub nom., American Family Ass’n v. FCC*, 365 F.3d 1156 (D.C. Cir. 2004), *cert. denied*, 543 U.S. 1000 (2004); *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, Notice of Proposed Rulemaking, 34 FCC Rcd 851 (2019), Report and Order, 34 FCC Rcd 12519 (2019).

<sup>30</sup> *FCC Adopts Limit for NCE FM New Application in October 12-October 19, 2007 Window*, Public Notice, 22 FCC Rcd 18699 (2007); *FCC Adopts 10-Application Limit for NCE FM New Stations in Upcoming 2021 Filing Window*, MB Docket No. 22-343, Public Notice, 36 FCC Rcd 7754 (2021).

<sup>31</sup> See 47 C.F.R. § 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,

complete,” curative amendments to correct signature deficiencies will be accepted.<sup>32</sup> Assuming, *arguendo*, that Kaub was not authorized to sign the Applications, the Application were nonetheless “substantially complete” as originally filed, and Gallup has amended them so that the signatory is Raymond Calderon, the President of Gallup.<sup>33</sup> Accordingly, because each of the Applications now unquestionably complies with the Signature Rule, the signature issue is moot and we deny the David Joint Objection.

**Conclusion/Action.** Accordingly, **IT IS ORDERED** that the Informal Objection filed on December 6, 2022 (Pleading Nos. 0000176814, 0000176815, and 0000176816) and the “Informal Objection and Supplement” filed on February 22, 2022 (Pleading Nos. 0000185122, 0000185123, and 0000185124) by Triangle Access Broadcasting, Inc. **ARE DISMISSED**.

**IT IS FURTHER ORDERED** that the Informal Objection filed by Alpert Alan David on March 12, 2022 by Albert Alan David (Pleading File No. 0000186548) **IS DENIED**.

**IT IS FURTHER ORDERED** that the Informal Objection filed on June 6, 2022, by Albert Alan David (Pleading File Nos. 0000192980, 0000192981, 0000192982, and 0000192983) **IS DENIED**.

**IT IS FURTHER ORDERED** that the applications of Gallup Public Radio for construction permits for new noncommercial educational FM stations at Black Rock Arizona (File No. 0000166063), Zuni Pueblo, Arizona (File No. 0000166066), Ganado, Arizona (File No. 0000166068) and Burnside, Arizona (File No. 0000166069) **ARE GRANTED**.

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@triaces.org)

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para. 3 (MMB 1991).

<sup>32</sup> See, e.g., *Communications of Gaithersburg, Inc.*, Memorandum Opinion and Order, 60 FCC 2d 537 (1976) (permitting applicant to amend an AM application signed by person not qualified to sign under the Commission’s rules and submit a correct signature); *Santa Monica Community College District*, Hearing Designation Order, 9 FCC Rcd 3134 (1994) (allowing applicant to amend an NCE-FM application to include a signature that complies with section 73.3513 of the Commission’s rules); and *Jane A. Roberts*, Decision, 29 FCC 141, 150, para. 24 (1960) (allowing *nunc pro tunc* amendment of signature, thus conforming application with the requirements of the Commission’s rules).

<sup>33</sup> As noted above, Gallup argues that Kaub was authorized to sign the Applications and there was therefore no violation of the Signature Rule. Note 22, *supra*. We do not address this issue given our finding that the Applications are presently in compliance with the Signature Rule.