

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In re Application of	)	
	)	
<b>VANGUARD ASSOCIATION OF</b>	)	File No. 0000167734
<b>SUNBELT COLLEGES CORPORATION</b>	)	Facility ID #768673
	)	NCE MX Group No. 223
For a Construction Permit for a	)	
New Noncommercial FM Station	)	
At Rosendale, Wisconsin	)	
TO:		The Secretary
ATTN:		The Commission

**OPPOSITION TO PETITION TO DENY**

Vanguard Association of Sunbelt Colleges Corporation (“Vanguard”), by counsel, hereby opposes the Petition to Deny its above-identified application filed by WRVM, Inc. on February 11, 2023, and the Supplement to the Petition filed on February 21, 2023 (collectively, the “Petition”). The Petition does not present any factual or legal basis to support Vanguard’s request to deny Vanguard’s application and it must therefore be rejected.

In its original application filed during the 2021 NCE filing window, Vanguard proposed a service area that would provide a first NCE service to 26,810 people, and a second NCE service to 67,533 people. On March 10, 2022, Vanguard amended its application to propose a modified service area that would provide a first NCE service to 18,092 people, and a second NCE service to 51,030 people. In the course of its evaluation of the applications in MX Group 223, the

Commission relied on the coverage figures provided in Vanguard's March 10, 2022 amendment.<sup>1</sup> These statistics became a factor in Vanguard being named the Tentative Selectee in MX Group 223.

WRVM asserts that the coverage data provided in the Vanguard amendment should be disregarded completely, and that Vanguard should receive no credit for Fair Distribution of Service. WRVM appears to be arguing that any post-filing window amendment should be disregarded in the comparative analysis of mutually exclusive applications. To support this viewpoint, WRVM cites a recent Commission ruling involving an applicant in MX Group 130 in which a post-filing window amendment was rejected.<sup>2</sup> However, upon even a cursory review, it can easily be seen that the facts in that case were not at all parallel to the facts in Vanguard's case.

The Group 130 applicant's original application contained no data about the fair distribution of service. The applicant attempted to correct this oversight by filing a post-window amendment to furnish the coverage statistics. The Media Bureau correctly judged this to be an improper attempt to upgrade the proposal after the close of the filing window. Post-window *upgrades* are clearly always impermissible. The application was evaluated on the basis of its original application – which showed no coverage data.

Vanguard, on the other hand, timely submitted appropriate data about its fair distribution of service proposal in its application in the filing window. Subsequently, Vanguard voluntarily

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<sup>1</sup> *Comparative Consideration of 34 Groups of Mutually Exclusive Applications for Permits to Construction New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 23-5, at par. 102-104 (rel. January 24, 2023).

<sup>2</sup> *Community Service Broadcasting Foundation*, DA 22-548 (MB rel. May 18, 2022).

chose to amend its application so as to reduce, or *downgrade*, its fair distribution numbers.

WRVM cites no precedent to support its argument that, apparently, any post-window amendment should be disregarded in the comparative analysis. WRVM cannot cite any such precedent because none exists. The rulings that WRVM does cite all indicate that attempts to improve or enhance an application's comparative position with a post-window amendment should be rejected. However, Vanguard was not attempting to enhance its comparative position by reducing its fair distribution numbers. Consequently, the Commission was correct to accept Vanguard's amendment and to rely on it for the purposes of its analysis in MX Group 223.

In the Supplement to its Petition, WRVM attacks the validity of the Fair Distribution calculations in Vanguard's original application. WRVM submits its own technical exhibit purportedly showing that Vanguard had slightly overstated the number of people who would receive first and second NCE service from its proposed station. Without a shred of evidence, WRVM accuses Vanguard of deliberately misrepresenting the population figures in its Fair Distribution showing. On this basis, WRVM argues that Vanguard's original technical exhibit should be disregarded as a nullity. Under this theory, WRVM then appears to suggest that Vanguard's post-window amendment proposing a reduced coverage area and reduced population figures for its Fair Distribution data is essentially an improper upgrade and should be rejected.

WRVM's argument is utterly without merit. First, even if Vanguard's original population figures were inaccurate, there is no evidence that Vanguard committed misrepresentation to the Commission. To find misrepresentation, there must be a demonstration of intent to deceive. WRVM makes no effort to show such intent on the part of Vanguard.

Vanguard's Fair Distribution exhibit was prepared with the use the V-Soft

Communications Probe software, version 5.34. This is a widely used and accepted software for depicting the proposed coverage area in FM applications. WRVM does not identify the software it used to produce the counter exhibit, and the validity of this software is unknown. In any event, it is not uncommon for small differences in data to appear when comparing the products of different coverage prediction software. Without further legitimizing of its process, WRVM's exhibit does not prove much of anything. In cases where minor errors in population counts have been discovered by the Commission's analysis, it has been the agency's practice to simply substitute its own figures for those of the applicant rather than completely discount the applicant's data.

Even if Vanguard's original data were wrong, that fact would be irrelevant because Vanguard amended its application to present a coverage proposal with reduced population. There is no rule or policy that prohibits such an amendment. Quite importantly, WRVM has not challenged the validity of the Fair Distribution population figures in Vanguard's amendment, which was used by the Commission in its comparative analysis of this MX group, and therefore contains the only relevant data.

The foregoing considered, Vanguard respectfully urges the Commission to reject  
WRVM's Petition to Deny, and to grant the Vanguard application.

Respectfully submitted,

VANGUARD ASSOCIATION OF SUNBELT  
COLLEGES CORPORATION

By:           /Donald Martin/            
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Its Attorney

March 8, 2023

## **CERTIFICATE OF SERVICE**

I, Donald E. Martin, hereby certify this 8th day of March, 2023, that I have caused a copy of the foregoing document to be served by electronic mail upon the following:

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