

Before the
Federal Communications Commission
Washington, DC 20554

In the Application of:

TELEAMERICA COMMUNICATIONS)	MX Group 51
WEST PALM BEACH, CORP.)	File No. 0000167478
)	Facility No. 768214
<i>For Construction Permit</i>)	
<i>Key West, Florida</i>)	
)	

Filed With: **Office of the Secretary**
Directed to: **Chief, Audio Division, Media Bureau**

OPPOSITION TO “PETITION FOR RECONSIDERATION”¹

Teleamerica Communications West Palm Beach, Corp. (“TCW”), by its attorney, hereby submit its Opposition to the “Petition for Reconsideration” (“Petition”) dated January 31, 2023, filed by Newland Broadcasters, Inc. (“NBI”). With respect thereto, the following is stated:

TCW filed its application for a new NCE FM station at Key West, Florida, LMS File No. 0000167478, during the FCC’s November 2021 filing window (the “TCW Application”). The TCW Application and NBW’s Key West application are each a part of NCE MX Group No. 51, which includes two applications proposing service to Key West, Florida.

¹ Under the Commission’s Rules, NBI was entitled to file a Petition to Deny the TCW Application. 47 CFR § 73.7004. No such Petition was filed. Additionally, TCW was not served with a copy of the Petition. Therefore, the NBI filing should be treated as an Informal Objection.

Under Section 73.3587 of the Commission’s rules, “[t]he limitation on pleadings and time for filing pleadings provided for in §1.45 of the rules shall not be applicable to any objections duly filed under this section.” Therefore, this Opposition is timely filed.

On January 24, 2023, the Commission released a *Memorandum Opinion and Order*, FCC 23-5 (2023) (the “*MO&O*”) which, among other things, named TCW as the tentative selectee for MX Group 51. Because both applicants claimed service to the same community, the two applicants proceeded to a point system analysis. The Commission then stated:

Neither applicant claims points as an established local applicant. Each applicant claims two points for diversity of ownership. NBI also claims points as a state-wide network. Such points, however, are only available to applicants that do not qualify for two points for diversity of ownership. NBI cannot receive points under both criteria. With respect to technical parameters, TCW’s proposed 60 dBu contour would encompass 16 square kilometers with a population of 24,649. NBI’s proposed 60 dBu contour would encompass 11 square kilometers with a population of 23,342. Because neither applicant’s proposal would serve at least 10% more area and population than the other, we do not award points for this criterion. Thus, TCW and NBI are each credited with a total of two points and proceed to a tie-breaker analysis.

The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. TCW certifies that it has no attributable interests in any radio authorization, and NBI certifies that it has an attributable interest in one radio authorization. TCW therefore prevails based on this first tie-breaker and is the tentative selectee in Group 51.

Id. at ¶¶ 36-37 (footnotes omitted). As a result of the tie-breaking criteria pertaining to the number of existing authorizations in existence by each applicant at the time the applications were filed, TCW rightfully was declared the prevailing applicant.

NBI claims that TCW’s receipt of an award of a construction permit for Deming New Mexico (File No. 0000167859) should count as an attributable interest under the Commission’s tie-breaking criteria. Petition at 1. NBI is not correct. Section 73.7003(c) of the Commission’s Rules clearly state:

If the best qualified (highest scoring) two or more applicants have the same point accumulation, the tentative selectee will be determined by a tie-breaker mechanism as follows:

(1) Tie breaker 1. Each applicant's number of attributable existing authorizations (licenses and construction permits, commercial and noncommercial) in the same service (radio or television) nationally, as of the time of application shall be compared, and the applicant with the fewest authorizations will be chosen as tentative selectee. Radio applicants will count commercial and noncommercial AM, FM, and FM translator stations other than fill-in stations. Television applicants will count UHF, VHF, and Class A stations.

47 C.F.R. § 73.7003(c)(1) (emphasis added). In this case, the Deming authorization for TCW cited by NBI was not granted until September 22, 2022, nearly a year after the TCW Application for Key West in MX 51 was filed. Therefore, that Deming authorization properly was not considered or counted in the Commission's analysis. The Commission properly determined that TCW's Application prevailed under the Commission's analysis.

There is no basis for NBI's other objections. TCW's application properly specifies Channel 215 in all current Exhibits, and properly specifies coordinates that serve Key West.

WHEREFORE, based on the forgoing, it is respectfully requested that the Petition for Reconsideration, filed on behalf of Newland Broadcasters, Inc., be denied.

Respectfully submitted,

**TELEAMERICA COMMUNICATIONS
WEST PALM BEACH, CORP.**

By: _____/Dan J. Alpert/_____
Dan J. Alpert

Its Attorney

*The Law Office of Dan J. Alpert
2120 N. 21st Rd.
Arlington, VA 22201
703-243-8690*

March 19, 2023

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing “Opposition to Petition for Reconsideration” is being served on the following parties to this proceeding via First Class Mail:

Newland Broadcasters Inc.
606 Bald Eagle Suite 607.
Marco Island, FL 34145

_____/Dan J. Alpert/_____
Dan J. Alpert