

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

In re: MX Group No. 33)	
)	
Stonewall Alliance Chico)	File No. 0000167629
)	Facility ID 768720
for a New Noncommercial Educational)	
FM Station Construction Permit.,)	
Willows, California)	
)	

OPPOSITION TO PETITION TO DENY

Stonewall Alliance Chico (“SAC”) here files *Opposition to Petition to Deny* (“Opposition”) to Vida Vale Vivir, Inc.’s (“VVV” or “Petitioner”) *Petition to Deny* (“Petition”) regarding for a construction permit for a new noncommercial educational FM station at Willows, California, FCC File No. 768720. The Media Bureau’s *Memorandum Opinion and Order*, FCC 22-61, released August 2, 2022, named SAC as the MX Group 33 tentative selectee and accepted SAC’s application for filing.¹ SAC’s application is mutually exclusive to VVV’s within MX Group 33.

OVERVIEW

The FCC Media Bureau carefully reviewed SAC’s application FCC Form 2100, Schedule 340 (“Form 340”) and deemed it the tentative selectee of MX Group 33.

¹ Paragraph 25-26. *Comparative Consideration of 27 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion & Order, FCC 22-61. (August 2, 2022).

Since VVV was not the tentative selectee, it reviewed SAC's application for perceived trivial deficiencies, with intent to invalidate the proposal. VVV believes the FCC has erred in assessing SAC's application, assessing numerous misleading arguments without regard of veracity or applicability. SAC will demonstrate within this *Opposition* that VVV's grievances are unfounded.

CONCERNING PURPORTED LACK OF DIVERSITY OF OWNERSHIP

VVV contends SAC failed to support its Diversity of Ownership claim within its Form 340, and thus two points should be rescinded from its total NCE Point claim.² Diversity of Ownership constitutes that fact that the applicant's proposed "principal community contours of its proposed NCE FM station do not overlap with those of any other full-service radio station or non-fill in translator station, in which the applicant, or any party to the application, holds an attributable interest."³ To qualify for the two points for Diversity of Ownership, Form 340 instructions guide the applicant to either provide a contour exhibit demonstrating that its proposed 70 dBu FCC contour does not cross a co-owned or attributed principal service contour of another broadcast station, or assurance that the applicant holds no attributable interests in any nearby radio stations.⁴ That is exactly what SAC did. Below is an excerpt for SAC's Form 340:

² VVV *Petition to Deny*, p 4.

³ See 11465, *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*, Public Notice, 36 FCC Rcd. 11458 (MB 2021) ("NCE FM 2021 Window Public Notice").

⁴ *Ibid*.

Attributable Interest

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Section	Question	Response
Equity and Financial Interests	Applicant certifies that equity and financial interests not listed in the Parties to the Application section are non-attributable pursuant to the notes to 47 C.F.R. Section 73.3555.	Yes
Other Authorizations	Does the applicant or any party to the application have an attributable interest in any other broadcast station(s).	No

SAC answers “Yes” to “Applicant certifies that equity and financial interests not listed in the Parties to the Application section are non-attributable pursuant to the notes to 47 C.F.R. Section 73.3555.” SAC answers “No” to “Does the applicant or any party to the application have an attributable interest in any other broadcast station(s).”

Furthermore, under “Point System Factors/Tiebreakers” CAP declares the following:

Existing Authorizations	By placing a number in the box, the applicant certifies that it and other parties to the application have, as of the date of the filing and pursuant to 47 C.F.R. Section 73.3555, attributable interests in the stated number of relevant broadcast station authorizations. Radio applicants should count all attributable full service radio stations, AM and FM, commercial and noncommercial, and FM translator stations other than fill-in stations or those identified in the second question (pledge to divest an attributable broadcast interest/resign from an attributable positional interest) under Diversity of Ownership above.	0
Pending Applications	By placing a number in the box, the applicant certifies that it and other parties to the application have, as of the date of the filing and pursuant to 47 C.F.R. Section 73.3555, attributable interests in the stated number of pending applications for new or major changes to relevant broadcast stations. Radio applicants should count all attributable full service radio stations, AM and FM, commercial and noncommercial, and FM translator stations other than fill-in stations or those identified in the second question (pledge to divest an attributable broadcast interest/resign from an attributable positional interest) under Diversity of Ownership above.	1

“Existing Authorizations: 0, Pending Applications: 1.” Here, CAP decrees, again, that it owns no other broadcast licenses or permits, and solely has one total pending application (the application in question here for Willows, California).

These statements are made under attestment that “WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, §1001) AND/OR REVOCATION OF ANY STATION AUTHORIZATION (U.S. Code, Title 47, §312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, §503)” signed by Conner Wenzel, Board Chair of SAC.

SAC certified by the highest degree that none of its board members, and the entity itself, do not have any attributable interest in any other broadcast station, permit, or pending application. Thus, it is firmly demonstrated that SAC cannot own any other broadcast station. Hence, it has certified under the application’s instructions that it is **impossible** for the applicant or any board member to have any nearby ownership of any facilities overlapping the proposed station’s 70 dBu contour. **This sufficiently passes legal muster for proof for asserting Diversity of Ownership points.** VVV claims this is not valid. VVV suggests a **duplicate statement -- declaring the same exact information --** but placed as an attachment to the application is required. Or, alternately, a contour map showing the proposed 70 dBu with a note that says “the application has no other broadcast facilities, thus, no facility can overlap this proposed 70 dBu.”

What VVV is demanding is redundant and beyond what is being requested. It is understandable that in many cases where the applicant has other licenses it needs to

provide further information to secure these points. But if the facts can be demonstrated within the application without an attachment reiterating the same information, *proof is proof*. Furthermore, other non-commercial, educational applicants have already used the validation approach SAC has used for claiming Diversity of Ownership points. Invalidating SAC's claim would break from FCC precedent in the way FCC legal staff processed previous non-commercial, educational applications, opening legal contests past applications through the FCC and appellate court.

CONCERNING PURPORTED LACK OF HEADQUARTERS LOCATION

VVV contends SAC cannot claim Established Local Applicant NCE points.⁵ For proof of this, it simply says it “frequently” had visited SAC during business office hours, finding an “empty office.” VVV states that on one visit “SAC’s neighbor could not recall the last time anyone from SAC was seen at the office.” These are the type of broad statements made when a petitioner needs to exclude details that would not work in favor of its case. Otherwise, VVV would have provided detailed, sworn statements. Let us enumerate the paucity of details that make VVV’s story not credible:

- (A) There are no details of who visited, what day of the week, what time, and the date. VVV just says “frequently.”
- (B) The terminology is vague. “[E]mpty office” could mean “does not notice people in the front office or through the front door/window” or it could also ambiguously imply “the entire office is emptied-out.”

⁵ VVV *Petition to Deny*, p 5.

- (C) The unknown VVV representative that visited Chico then obtains the opinion of an undisclosed third party nearby SAC's alleged headquarters, who states they "could not recall the last time anyone from SAC was seen at the office."
- (D) The Petitioner lists that the VVV representative visits "359 East 6th St., Chico, California" when the address of SAC listed on the website and FCC application is "358 East 6th St, Chico, California."⁶ Petitioner is visiting the office across the street from SAC, which does not belong to SAC. VVV is suggesting that it "frequently" makes a 190-mile round trip from Charmichael, California to Chico, California to look through the wrong front door window without documenting any facts or taking a single photograph for use in a petition to the FCC. This is unlikely. It is more likely that VVV is asserting ambiguity, and an intentional erroneous address as a cover so if it is questioned in the future for fabricating incongruous evidence under penalty of perjury, it has an excuse.
- (E) VVV does not provide supporting affidavits for what it professes. Section 73.7004 requires that "[a]ny such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof." The information provided in VVV's Petition does not comply with Section 1.16 of the rules ("Unsworn declarations under penalty of perjury in lieu of affidavits"). Neither the undisclosed person visiting the SAC address or the undisclosed "neighbor" referenced in the petition have signed a declaration under penalty of perjury per §1.16 of the rules which

⁶ VVV *Petition to Deny*, p 5.

is required for evidence. Hence the information presented in the petition is hearsay.

(F) Although the Petitioner has qualified counsel that appears to have explored multiple angles to refute the validity of SAC's application, it conveniently omits that under "**Contact and Access Info**" on SAC's website that the following announcement had been posted the entire time: **"Open by Appointment Only. Our office is closed as a walk-in center to the public at this time, in accordance with COVID-19 Safety Guidelines. Please request information or an appointment for services using the form, below."** See **ATTACHMENT A1** is a screenshot of SAC's website. SAC has no record of VVV calling or filling out the form to schedule an appointment to meet at the SAC headquarters office. In **ATTACHMENT A2** under the webpage under the "**COVID-19 Updates > Changes to our Center**" tab it also states **"In order to help keep our community safe during the COVID-19 pandemic, Stonewall will be temporarily closing as a Day Center; however, we will continue to offer all of the services we can, online and over the phone."** This page also explains that in-person services have been to internet video teleconferences. This does not mean the center has moved out of their local community center. These overlooked details are consistent with VVV's aforementioned curated, detail-omitted evidence. If the Petitioner simply called and asked for a SAC headquarters tour, it

would have not been able to state that it believes SAC is not an Established Local Applicant.

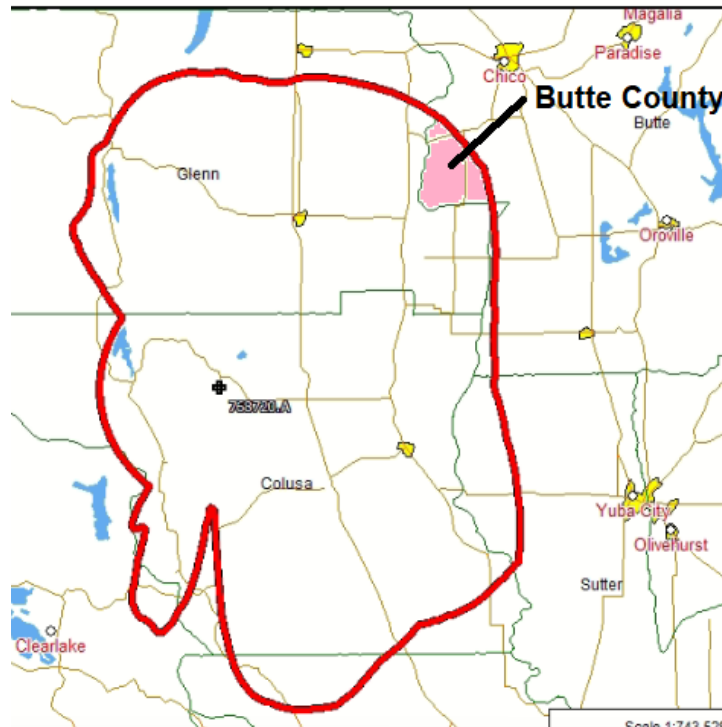
ATTACHMENT B is a sworn statement from SAC Executive Director Andrea Mox validating that SAC has resided and currently resides at 358 East 6th St, Chico, California. SAC's website, www.stonewallchico.com, details numerous activities connected with the center: [Trainings, consultations, workshops](#), care/legal resources, [social and support groups](#), [counseling](#), [HIV/hepatitis testing](#), and community events.

VVV then goes on to furnish impertinent information regarding SAC in relation to the application for new radio channel:

SAC also references its intent to serve the citizens of Butte County, California in its Educational Purpose exhibit. SAC's references to Butte County are disqualifying for two reasons. First, SAC's proposed community of license, Willows, California, is located in Glenn County, California – not Butte County, California. Second, as demonstrated in its Engineering Exhibit, SAC's proposed service contours do not cover any populated portion of Butte County.⁷

VVV is preoccupied that SAC states it will assist people in Butte County, but does not specifically state it is to serve people in the adjacent county of Glenn County, where the city of Willows (the proposed community of license) is located. There is no FCC rule or precedent that VVV references that applicants cannot serve counties outside of the county it is located. Furthermore, contrary to what the Petition certifies to be true via declaration, the proposed 60 dBu contour *does cross into a non-zero populated area of Butte County*, as seen below.

⁷ VVV *Petition to Deny*, p 6.



CONCERNING LACK OF PHYSICAL-LOCATION FCC PUBLIC INSPECTION FILE

VVV states “There is no evidence that SAC established a public inspection file for its proposed NCE station as it certified in its application. All NCE FM 2021 Window applicants must create and maintain a public inspection file for their proposed stations immediately following the filing of their applications.” It goes on to state this physical public file must be located at the community of license, open for inspection during regular business hours. It is unclear why a communications attorney is referencing outdated rules. In no place in the *NCE FM 2021 Window Public Notice* does it reference the applicant creating a physical public file. In fact, as of March 1, 2018, the FCC mandated that all radio broadcasters comply with discontinuing a physical public file and migrating that information to the Commission’s *Online Public Inspection File*

system.⁸ Because the only documents in a new station's public file would merely be the pending application and amendments, the link to LMS within a public notice has supplanted the initial physical public file. Furthermore, there is no indication that VVV has a physical public file; it is peculiar that VVV would command SAC to have one. This issue is impertinent to SAC's application.

CONCERNING LACK OF PROOF OF PUBLIC NOTICE

VVV asserts SAC has not precisely followed the public notice protocol of Section 73.3580(c)(1)(i). SAC admits that it is late in filing a public notice announcement for its application. However, the FCC has ruled that "an applicant's publication of local notice after the 30-day period has elapsed **is not a disqualifying defect.**"[bold added]⁹ The FCC has also consistently allowed "**an applicant who has not complied with the rule to publish its local notice late**"[bold added]¹⁰ To that effect, with the submittance of this *Opposition*, SAC has posted a public notice link on the front page of its website as of September 8, 2022. Upon completion of this public notice, SAC will file an affidavit within the file within this proceeding demonstrating public notice has been accomplished.

⁸ See *Media Bureau Reminds Radio Broadcasters And Cable Operators Of March 1, 2018 Online Public File Deadline*. Public Notice. DA 18-135 (February 12, 2018).

⁹ See page. 5, *Letter from James D. Bradshaw to Joel Christerson, In re: New(FX), Portland, OR Facility ID No. 201227, File No. BNPFT-20171212AAB (1800B3-SS) ("Christerson")*. (Sept. 11, 2018) referencing *Ojeda Broadcasting*, Hearing Designation Order, 8 FCC Rcd 1648, 1649, para. 9 (1993) (petition to dismiss application due to noncompliance with the public notice requirement without merit).

¹⁰ See p 5. *Christerson*, referencing *United Broadcasting Co. of Eastern Maryland, mc., Memorandum Opinion and Order*, 90 FCC 2d 534, 537, para. 8 (1982).

CONCERNING FM CLASS OF PROPOSED NEW FACILITY

VVV contends the HAAT of the proposed facility exceeds the FM Class Contour Distance of a Class B1 station. VVV is correct; the Class for the proposed FM station is “Class B” and not “Class B1”. However, this technical defect is inconsequential if amended. The technical defect is not fatal. The applicant is permitted to perform technical amendment as long as the amendment does not enhance the technical factors affecting NCE Point ranking.¹¹ Hence, concurrent to this *Opposition* being filed, a technical amendment is being filed with FCC LMS to change the facility from “Class B1” to “Class B”. This technical amendment does not affect the technical parameters of the proposed facility.

CONCLUSION

As reviewed above, there are no defects regarding SAC’s that would warrant dismissal. VVV’s pleading is utilizing the “throw as many accusations as possible against the wall” approach to invalidate SAC’s application instead of raising genuine concerns. VVV’s petition should be denied.

¹¹ The FCC beckons applicants to maintain “accuracy and completeness” of applications after the window filing date. Page 11, *2021 NCE Filing Window Public Notice*.

Submitted By,

/s/

Andrea Mox
Executive Director, SAC
2910 Table Mountain Blvd
Oroville, CA 95965
530-893-3363
andrea@stonewallchico.org

September 8, 2022

CERTIFICATE OF SERVICE

I certify the following was sent First Class Mail, US Postal Service to the Attorney representing Vida Vale Vivir, Inc.:

Keenan P. Adamchak
Baker & Hostetler LLP
One Washington Square
1050 Connecticut Avenue, NW
Suite 1100
Washington, DC 20036

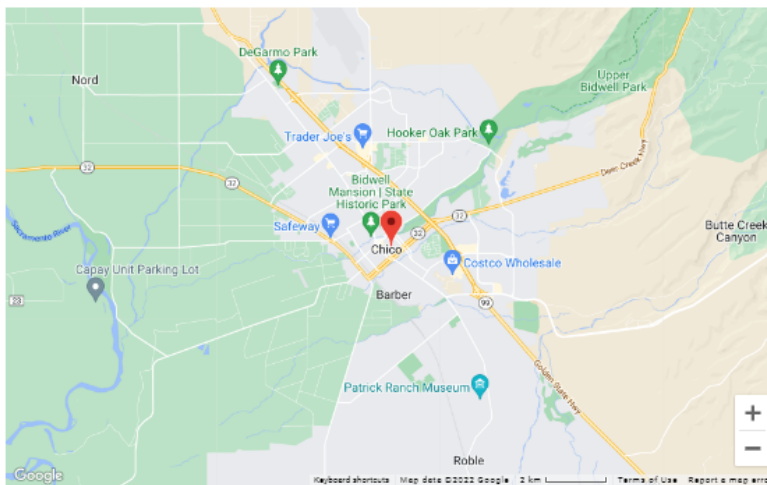
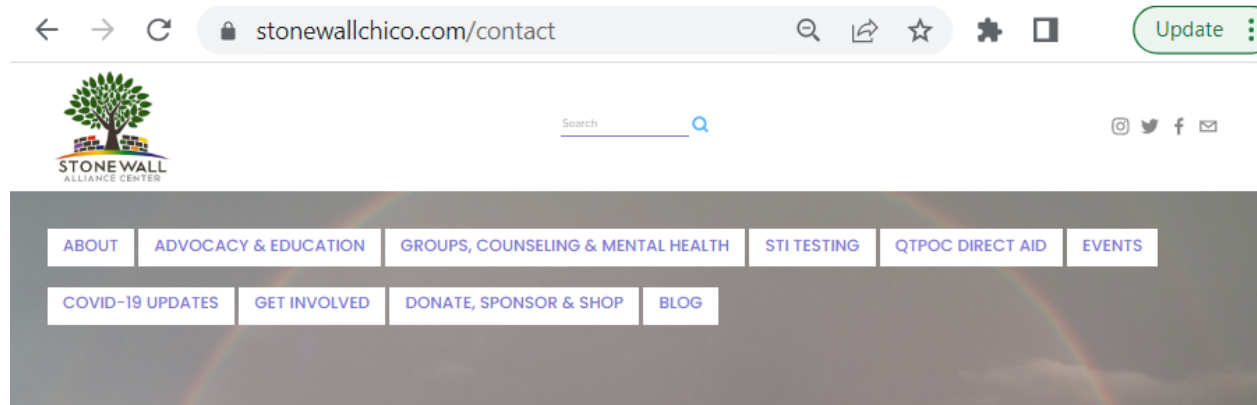
on September 9, 2022

Signed,

/s/

Andrea Mox

ATTACHMENT A1: Stonewall Chico website excerpt, under “Contact and Access Info” tab



CONTACT US

Open by Appointment Only

Our office is closed as a walk-in center to the public at this time, in accordance with COVID-19 Safety Guidelines.

Please request information or an appointment for services using the form. below.

**358 EAST 6TH STREET
CHICO, CA, 95928**

**OFFICE HOURS: MONDAY-FRIDAY,
12PM-6PM**

MAILING ADDRESS:

PO Box 8855
Chico, CA 95927-8855

EMAIL ADDRESS:

center@stonewallchico.org

PHONE: (530) 893-3336

STONEWALL ALLIANCE OF CHICO STRIVES TO MEET THE ACCESS NEEDS OF AS MANY COMMUNITY MEMBERS AS WE CAN. PLEASE FEEL FREE TO REACH OUT WITH QUESTIONS OR ADDITIONAL ACCESS NEEDS.






CENTER ACCESSIBILITY INFO:

The Stonewall Alliance Center is wheelchair accessible and has all-gender restrooms. We ask visitors to follow our fragrance-free guidelines and refrain from wearing heavy manufactured scents in the office. We have no

ATTACHMENT A2: Stonewall Chico *website excerpt*, under “COVID-19 Updates, Changes to our Center” tab

← → ↺ 🔒 stonewallchico.com/covid 🔍 📁 ☆ ⚙️ 📱 Update ⋮

STONEWALL ALLIANCE CHICO IS LOCATED ON KONKOW MAIDU AND MECCHOOPDA LAND. ✕

 🔍    

ABOUT ADVOCACY & EDUCATION GROUPS, COUNSELING & MENTAL HEALTH STI TESTING QTPOC DIRECT AID EVENTS COVID-19 UPDATES


GET INVOLVED DONATE, SPONSOR & SHOP BLOG

HOW ARE WE RESPONDING TO COVID-19?


The Stonewall Alliance Center of Chico has been closely following the developments and Public Health recommendations regarding COVID-19. The health and safety of our community is our number one priority, and we are taking extra care to keep our office sanitized each day and in-between visits from the public.

In order to help keep our community safe during the COVID-19 pandemic, Stonewall will be temporarily closing as a Day Center; however, we will continue to offer all of the services we can, online and over the phone:

- Our **social and support groups are meeting via video chat**. Details, schedule, and links to join are accessible right here at www.stonewallchico.com/social-and-support-groups.
- Our **counselors are meeting with existing clients via video chat**, and are able to refer to other LGBTQ+ competent mental health professionals in the community who are taking new clients via video chat. Call 530.809.2485 or email counseling@stonewallchico.org for more information.
- Our **Advocacy Coordinator is taking one-on-one appointments** for Name and Gender Change assistance, chest binders, rights, resources, and other services. Email them directly at marin@stonewallchico.org to set up a phone or video appointment.
- **HIV and Hepatitis C Testing by appointment only**. Please email marin@stonewallchico.org or call 530-893-3336 to discuss details.
- We are moving forward with planning for our annual events and gatherings, including Trans* Week and Chico Pride, which will take place in the Fall of 2020.



**WE ARE TEMPORARILY
CLOSED AS A DAY
CENTER.**



**SOCIAL DISTANCING
IS COMMUNITY CARE**

**STAY HOME. WASH YOUR
HANDS. CALL US FOR
QUESTIONS, CONNECTION,
AND APPOINTMENTS.**

ATTACHMENT B: Sworn Declaration of SAC Executive Director Andrea Mox

SWORN DECLARATION OF ANDREA MOX

This statement is to establish that the headquarters address for Stonewall Alliance Center of Chico is at 358 East 6th St, Chico, California. Stonewall was incorporated Aug 21, 1990, as a nonprofit with the California Secretary of State and State Franchise Tax Board as a "charitable and educational", as supported in the original FCC application. Stonewall has resided at this location, uninterrupted, for at least two years prior to their FCC NCE application being submitted, as asserted in the original application.

As a public health entity, Stonewall Alliance of Chico must follow State and county guidelines for operations under Covid-19. While Stonewall Alliance of Chico was closed to public drop-ins until June 2022, we continued to offer services to individuals on an appointment basis. This included appointments for STI testing, name changes, gender marker changes, binder fittings, and referrals for medical services like hormone replacement therapy and surgeries. Additionally, we continued to provide cultural competency training and online access to support groups and counseling services. We reopened in full June 2022 once we felt it was safe for our staff and community to do so. Stonewall made every effort to meet community need in the most accessible and safest ways possible during the pandemic.

Stonewall's current hours are 12:00pm to 6:00pm Monday-Friday.

I, Andrea Mox, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in dark ink, appearing to read 'Andrea Mox', with a stylized, cursive script.

Andrea Mox
2910 Table Mountain Blvd
Oroville, CA 95965
Executed on September 8, 2022