

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In re the Application of	)	
	)	NCE FM MX Group 114
Evangelistic Knights of Our Lady, Inc.	)	
	)	Application File 0000167505
	)	
	)	FCC Identifier 767419
For Permit to Construct	)	
New Noncommercial Educational	)	Pleading Files
FM Station, Escanaba, Michigan	)	0000199130 and 0000197765

To: Office of Secretary  
Attention: Chief, Audio Division, Media Bureau

**MOTION TO DISMISS  
AND OPPOSITION TO INFORMAL OBJECTIONS**

Evangelistic Knights of Our Lady, Inc. (the “Knights”), by counsel, hereby moves to dismiss the *Informal Objections* -- one styled as such and submitted by Albert David (the “*David Objection*”) on or about August 16, 2022, and the other styled as a (defective) *Petition to Deny* and submitted by Full Potential on or about September 1, 2022 (the “*Potential Objection*”)(collectively, the “*Objections*”).<sup>1</sup>

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<sup>1</sup> The *David Objection* admits to its informal status and, thus, no filing deadline for a responsive pleading governs. The *Potential Objection*, although styled as a *Petition to Deny*, for the reasons explained herein, is defective on a number of grounds and, thus, is – at best – an informal pleading of which the staff might elect to take notice. But here again, because it is an informal pleading, no filing deadline applies. However, in an abundance of caution, to the extent the agency staff determine otherwise and decide that a filing deadline for an *Opposition* governs here, we hereby request leave for an extension or waiver of the deadline in view of the extended time it took the mail service to deliver the *Potential Objection* to counsel for the Knights. Since the September 1, 2022, date set forth on the *Potential Objection*, the Labor Day holiday, as well as an extended delivery period (USPS took a full week to deliver the pleading to counsel for the Knights), intervened. In additional support of the extension/waiver relief, during the period after the *Potential Objection* was delivered to counsel, there were two full days in which counsel was committed to be outside of the office presiding over meetings of the Board of Directors for a nonprofit on

The Knights timely submitted the above-captioned application (the “Application”) and staff evaluation of the relevant MX Group determined the Knights were the designee to receive a construction permit for a new noncommercial educational FM facility serving Escanaba, Michigan (the “Local Community”). The Knights had shown that they were eligible for the facility, in part, because they have been government-recognized as a nonprofit corporation since the date of incorporation. The Knights also showed that their establishment in the community pre-dates the date of incorporation by more than a century inasmuch as the “Knights of Columbus council” which incorporated as the Knights, as is the case with all Knights of Columbus councils, has an extensive history of fraternal activities, including without limitation promoting and conducting religious and charitable activities, within the Local Community.<sup>2</sup>

### **The Objections are Defective and Must be Dismissed**

Neither *Objection* establishes any standing of the party submitting the respective pleading. The *David Objection*, in particular, asserts no stake whatsoever

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which he serves. Moreover, once this responsive pleading was prepared, counsel encountered difficulty submitting it through the agency’s LMS filing system, and the assistance of agency staff was enlisted to eliminate the file number error which had resulted on multiple submission attempts. Consideration of the points set forth herein will serve the public interest in upholding the previous staff determination that the Knights are best qualified to introduce the proposed new Noncommercial Educational FM service, and any slight delay in submitting an *Opposition* pleading has not prejudiced any party.

<sup>2</sup> Originally founded by a Catholic priest to assist immigrants in caring for widows and orphans, the Knights of Columbus charters hundreds of unincorporated councils serving one or more Roman Catholic parishes and their communities. The Commission has a long history of recognizing as qualified broadcast licensees many religious nonprofit institutions -- including Catholic parishes and Knights of Columbus councils, in both unincorporated and incorporated versions.

in the disposition of this matter, but both *Objections* are silent with respect to standing.

Even if either of the *Objections* were filed by a party with standing, neither *Objection* is properly verified pursuant to the requirements of 47 C.F.R. §§ 1.16 and 1.52. Thus, even the *Potential Objection* is defective and may be ignored by the staff as a “sham filing” pursuant to Section 1.16 of the Rules.

Accordingly, the staff may proceed to granting the captioned application without conducting any further examination of the assertions set forth in the Informal Objections.

### **The Objections confuse Eligibility and Comparative Criteria**

We nonetheless herein respond to the notion that an incorporation date within a two-year period of the FCC filing deadline *de facto* disqualifies an applicant from receiving credit as being “established” in the Local Community.

To warrant denial, a petition must set forth specific facts demonstrating that a grant of the application would be *prima facie* inconsistent with the public interest,<sup>3</sup> and must supply a “totality of evidence [casting] sufficient doubt on the point that further inquiry is called for.”<sup>4</sup> As explained below, the *Objections* fall well short of these threshold considerations.

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<sup>3</sup> 47 U.S.C. §309(d)(1); see *Rocky Mountain Radio Co, LLP*, 15 FCC Rcd 7166 at ¶2 (1999), citing *Astroline Communications v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988).

<sup>4</sup> *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987).

The *Objections* assert that the Knights are not entitled to full credit for the many decades in which it has been established in the Local Community inasmuch as the date of its incorporation did not by precede by a full two years the date of its submission of an application for the permit to construct a noncommercial educational FM facility.

\* \* \*

**An incorporation date is not dispositive as an indicator of an institution's establishment in a community.**

There is no un-rebuttable presumption recognized by the FCC and that favors an incorporation date as the only indicator of when an institution became established in its community. An incorporation date may be the beginning, but certainly is not the end, of an inquiry as to establishment in a community.

In the instant matter, the Knights provide ample evidence that incorporation was not intended to establish a new and independent entity but rather to comply with the relatively new FCC emphasis on incorporation as a means of demonstrating government recognition by a state as a nonprofit in good standing.<sup>5</sup> The Commission's emphasis on incorporation to demonstrate the threshold eligibility question -- which we reference as the *Nonprofit Recognition Policy* -- presented Catholic Church entities with particular challenges. In numerous states and in many Church diocesan jurisdictions, Church enti-

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<sup>5</sup> *Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, FCC 13-116, ¶¶ 23-24 (August 23, 2013) (the Commission's "*Nonprofit Recognition Policy*").

ties are universally treated as nonprofit in nature and often pre-date in establishment the government of the state in which they are headquartered, albeit many have not incorporated and have little in the way of state recognition of their unique status.

The Knights, for example, had been established in the Local Community for several decades, and had no desire to cede credit for such a long tenure in order to demonstrate its *bona fides* as a nonprofit. However, the *Nonprofit Recognition Policy* prompted sufficient concern among Catholic institutions, including the Knights, that their eligibility for a Noncommercial Educational FM facility might come into question since for much of their existence they had not found incorporation to be a necessary to advance their fraternal and charitable activities. Such entities were not accustomed to being required to produce evidence of their longstanding nonprofit recognition by the state.

Indeed, when prompted for such evidence, many such applicants could produce only documentation of tax-exempt recognition by the Internal Revenue Service (“IRS”) under an “umbrella ruling” regarding Catholic institutions. While this implies state recognition, as well, it does not – strictly speaking – evidence state recognition of nonprofit status, much less evidence good standing. Thus, for many religious institutions, including Catholic entities such as a local parish or Knights of Columbus council, incorporation dates serve as a necessary and helpful way to establish state recognition of a prospective broadcast permittee insofar as the eligibility criteria demand such recognition of a nonprofit in good standing.

This in no way limits prospective applicants from claiming full credit for their long-established presence in a Local Community. After all, many religious institutions

established the communities themselves, and in some cases their established local presence pre-date the state government now presiding over the territory where the community is located.

The same rationale discredits any notion that parallel operations of the relatively new incorporated “arm”, as opposed to the more ancient presence of the unincorporated “arm” of a particular religious entity, such as a church or a local Knights of Columbus council, necessarily requires the agency to ignore the *long-established local community presence* of the one in order to recognize the “*nonprofit in good standing*” eligibility of the other. Established local presence, after all, is often much more organic than the formalism that the Informal Objections pre-suppose. Such formalism may be appropriate to establish threshold eligibility questions; it cannot be dispositive with respect to qualifying for comparative criteria.

For these reasons, the *Objections*’ references to data obtained on the Internet suggesting separate and distinct officers in the unincorporated vs incorporated entities, even if such data, *arguendo*, was accurate, is not especially meaningful and certainly not material to the Knights’ status as tentative selectee. The Knights never claimed that the unincorporated entity ceased to operate, only that the incorporated entity has been established and local for as long as the unincorporated local chapter of the Knights has existed. Moreover, disclosure of the unincorporated association’s officers and directors, if and when they vary from those of the incorporated entity, is not material to the governance of the applicant itself. The incorporated Knights, and only the incorporated Knights, is the

applicant and the tentative selectee. It is the governance of the incorporated entity that is material to control of a broadcast authorization. The Application provided correct data.

Date of incorporation may well serve as a “safe harbor” for establishing qualifications for comparative criteria, but to consider such a date as utterly dispositive would render the FCC comparative criteria scheme utterly nonsensical (or, in strictly legal terms, arbitrary and capricious). Any disproportionate reliance on date of incorporation for anything other than basic eligibility for a noncommercial license would force Catholic institutions, as well as similarly situated religious institutions, into a false choice between satisfying the Commission’s *Nonprofit Recognition Policy* and claiming credit for longstanding ties to the community a prospective radio licensee wishes to serve. We respectfully submit this could not have been the Commission’s intent.<sup>6</sup>

Consider, for example, the hypothetical application of a California parish church tracing its presence back to its status as an unincorporated mission established before California even existed as a state. Would that parish church, in the event it sought a FCC authorization pursuant to NCE comparative criteria, lose its claim to established local sta-

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<sup>6</sup> Even if, *arguendo*, an unintended consequence of the Commission’s *Nonprofit Recognition Policy* is to deny recognition of the long-established status of such applicants who incorporated solely as a means of satisfying the FCC’s policy, then such a result would invite strict scrutiny under the Religious Freedom Restoration Act of 1993 (“RFRA”), which prohibits federal agencies from substantially burdening a particular religious “person” -- even with a rule of general applicability -- unless the regulation is the least restrictive means of achieving a compelling government interest. 42 U.S.C. §§ 2000bb-2000bb-4 (2006). If the FCC had indeed intended to compel Catholic institutions to lay down their claims to establishment in a local community in order to demonstrate their qualifications to hold a noncommercial educational authorization -- or even if it were the unintended consequence of a confluence of the *Nonprofit Recognition Policy* and the agency’s application of its comparative criteria -- we respectfully submit that this effect cannot survive strict scrutiny under RFRA.

tus merely because, as a threshold eligibility matter, it incorporated and thus obtained “good standing” recognition within two years of a FCC Filing Window? Of course not.

In any event, to the extent the agency may wish to examine further evidence of the long-established presence of the Knights in the Local Community, attached hereto as Exhibit A is a sworn declaration in support of the material facts in this matter, including the assertion that the applicant is an incorporated extension of the unincorporated Knights of Columbus council serving the Local Community. At Exhibit B, we provide additional documentation of the pre-incorporation Knights serving the Local Community.

#### CONCLUSION

In view of the foregoing, the *Objections* fall short of the required burden in any Petition to Deny, even if either of the Objections qualified as such. The *Objections* therefore must be dismissed or denied. Accordingly, the captioned application should be processed pursuant to the staff determination of its status as the tentative selectee.

Respectfully submitted,

**EVANGELISTIC KNIGHTS  
OF OUR LADY, INC.**



By: \_\_\_\_\_

Stuart W. Nolan, Jr.  
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(540) 622-8070

Its attorney

Dated: September 23, 2022



## CERTIFICATE OF SERVICE

I, Stuart W. Nolan, Jr., hereby certify that on this date of October 11, 2022, I caused the foregoing “Motion to Dismiss and Opposition to Informal Objections” to be served by electronic mail, on the following:

Keenan Meredith  
Full Potential  
170 Weston St.  
Imlay City, Michigan 48444  
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Albert David  
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Audio Division, Media Bureau  
Federal Communications Commission  
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Stuart W. Nolan, Jr.

Dated: October 11, 2022

**EXHIBIT A**  
**Sworn Declaration of Deacon Michael Lebeau**

1. The undersigned is president of the Evangelistic Knights of Our Lady, Inc., applicant seeking authorization to launch a new NCE FM radio facility in Escanaba, Michigan.
2. I have read the foregoing Motion to Dismiss and Opposition to Informal Objections, as well as the Application itself and the exhibits and supporting documentation for the Application.
3. I have reviewed in particular the following:
  - (a) All claims regarding the nonprofit and educational nature of the applicant, which is indeed a nonprofit entity and in good standing with the State, and which has an educational component to its mission and activities;
  - (b) All claims regarding the applicant's location, as well as the origination and duration of that location, with an established local presence in Escanaba, Michigan; and
  - (c) All claims regarding the nature of the applicant as the incorporated extension of the unincorporated Knights of Columbus council serving Escanaba, Michigan.

I hereby declare, under penalty of perjury, that the foregoing are true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Deacon Michael LeBeau". The signature is written in a cursive style and is positioned above a horizontal line.

Deacon Michael LeBeau

Date: September 23, 2022

# KNIGHTS OF COLUMBUS

To whom it may concern - Greeting:

Whereas, it having been made known to the Officers of the National Council of the **KNIGHTS OF COLUMBUS**, that a sufficient number of eligible men residing in the **City of Escanaba** in **Delta** County, State of **Michigan**, having duly petitioned that they be chartered and authorized to organize and maintain a Council of our Order within said **Escanaba**, and it appearing to be for the benefit of said Order, that their petition be granted.

Therefore be it known that the duly authorized Officers of the Knights of Columbus, by and with the consent of said National Council hereby authorize and direct the following named gentlemen to assemble and work as a regularly constituted Council of the Knights of Columbus to be designated by the name

## Escanaba Council No. 640

Rev. Jos. M. Langan, Benedictine A. Buchholtz, Rev. Raymond J. Jacques, Rev. John S. Manning, Rev. Jos. L. Dollinger, John E. Lee, Matt. T. Smith, John Dover, John Wall, John Doemer, M. Diodoro, Timothy Sullivan, Richard Quinn, Arcade Chabot, M. J. Connor, E. M. Dutton, Michael E. McGehee, Peter J. Benieroe, Joseph C. Maynard, Edward Ryan, J. E. Scallon, Thomas Coughlin, W. McQuinn, M. C. Scully, Anthony Ferguson, W. Dinnegan, John Trotter, W. J. Dearing, Eugene E. O'Leary, D. D. McCreary, John D. Ward, Francis J. Benieroe, E. Maidna, M. D. A. Bell, Jeremiah Donava, Thomas Jordan, John Nolan, John C. Ryan, James J. Gaffney, John E. McSillis, J. M. Leffler, Jas. N. Thomas, W. Scholtes, No. 52, Moriarty, Emanuel No. 51, Jacques, Thos. S. Sullivan, A. J. Manley.

And we do hereby Grant to said Brothers aforesaid to receive members and perform all work of the Order agreeable to the usages of the Order of the Knights of Columbus, to exact from their members such fees as they shall judge necessary for the support of their Council, and the regular payments of all constitutional dues and to obey with due respect all ordinances emanating from the National Council of the Knights of Columbus.

In Testimony Whereof, We have hereunto affixed our names under the seal of the National Council.

Attest: **Edward L. Keam** Supreme Knight.

Given this **nineteenth** day of **January**, 1902.

**Samuel Colburn** Secretary.