



Federal Communications Commission
Washington, D.C. 20554

June 29, 2005

DA 05-1861
In Reply Refer to:
1800B3-CNZ

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New Jersey Public Broadcasting Authority
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Mr. Robert E. Kees, II
Community Media SNJ
52 Rye Lane
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In Re: NEW (NCE FM), South Toms River, NJ
Facility ID No. 123096
BNPED-20000303ACW

NEW (NCE FM), Beach Haven, NJ
Facility ID No. 94055
BPED-19990813MA

NEW (NCE FM), Toms River, NJ
Facility ID No. 123020
BNPED-20000303ABK

Applications for NCE FM Construction Permits

Group No. 990808

Dear Applicants:

We have before us Group 990808 – three mutually exclusive applications for permits to construct new noncommercial educational (“NCE”) FM stations serving different communities. In such situations, the rules require the Commission to make a threshold determination as to whether grant of any of the applications would further the fair, efficient, and equitable distribution of radio service among communities.¹ For the reasons below, we determine that New Jersey Public Broadcasting Authority (“NJPBA”) is entitled to a decisive Section 307(b) preference.

¹ See 47 U.S.C. § 307(b); 47 C.F.R. § 73.7002(a).

An NCE FM applicant is eligible to receive a Section 307(b) preference if it would provide a first or second reserved channel NCE aural service (in the aggregate) to at least ten percent of the population, provided that this constitutes at least 2,000 people, within the proposed station's 60 dBu contour.² If more than one applicant in a mutually exclusive group qualifies for a preference, we compare first service population coverage totals.³ An applicant will receive a dispositive fair distribution preference by proposing to serve at least 5,000 more potential listeners than the next highest applicant's first service total.⁴ If no applicant is entitled to a first service preference, we will consider combined first and second service population totals and apply the same 5,000 listener threshold.

In the present group, NJPBA would serve Toms River, New Jersey, Community Media SNJ ("Community") would serve Beach Haven, New Jersey, and JC Radio, Inc. ("JC Radio") would serve South Toms River, New Jersey. Each applicant claims that it would provide a new first or second NCE service to 10 percent of the population, and to at least 2,000 people, within its respective service area, and therefore, that it is eligible for a fair distribution preference.⁵ Only Community asserts that it is entitled to a first service preference.⁶ However, based on Community's submissions and calculations, it does not provide new first service to at least 2,000 people, so it does not appear to qualify for a first service comparative preference. Next, we consider whether one of the applicants would provide combined first and second service to 5,000 more persons than the next best applicant. NJPBA claims to provide a first or second service to 173,045 people (0 first service plus 173,045 second service). Community claims to provide a first or second service to 2,509 people (1,434 first service plus 1,075 second service). JC Radio claims to provide a first or second service to 69,982 people (0 first service plus 69,982 second service). Accordingly, pursuant to Section 73.7004 of the Commission's rules, we identify NJPBA as the tentative selectee. Group 990808 thus will not proceed to a point hearing.⁷

² See 47 C.F.R. § 73.7002(b). With respect to population information, applicants were to use the 2000 Census data, if available by June 4, 2001. See "Supplements and Settlements to Pending Closed Groups of Noncommercial Educational Broadcast Applications Due by June 4, 2001," *Public Notice*, 16 FCC Rcd 6893 (MB Mar. 22, 2001). Applicants were also to base their "fair distribution" analysis on the "snap shot" date of June 4, 2001, which is applicable unless the applicant subsequently makes engineering changes that would diminish its comparative position. *Id.* In this case, none of the applicants has made such engineering changes. In addition, each applicant timely supplemented its application with a Section 307(b) showing; each purports to be based on 2000 Census data and a "snap shot" date of June 4, 2001.

³ See 47 C.F.R. § 73.7002(b). See also "Deadline for NCE Settlements and Supplements Extended to July 19, 2001; Date for Calculating Comparative Qualifications Remains June 4, 2001," *Public Notice*, 16 FCC Rcd 10892, 10893 (MB May 24, 2001).

⁴ *Id.*

⁵ NJPBA's 60 dBu contour encompasses 187,885 people. NJPBA's claimed aggregated first and second service is 173,045 people. Community's 60 dBu contour encompasses 2,509 people. Community's claimed aggregated first and second service is 2,509 people. JC Radio's 60 dBu contour encompasses 69,982 people. JC Radio's claimed aggregated first and second service is 69,982 people.

⁶ Community claims to provide 1,434 people with new first service.

⁷ See 47 C.F.R. § 73.7002(b). The Media Bureau has delegated authority to make 307(b) determinations in NCE cases. See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 15 FCC Rcd 7386 (2000), partially reversed on other grounds, *NPR v. FCC*, 254 F.3d 226 (DC Cir. 2001) ("NCE Order"). See also 47 C.F.R. § 0.283. In the *NCE Order*, the Commission concluded that "[i]n examining the fair distribution issues, we will use the general process set forth in the Section of our Competitive Bidding proceeding that addressed Section 307(b) considerations for AM stations." See *NCE Order*, 15 FCC Rcd at 7397 (citing *Comparative Bidding for Commercial Broadcasting and Instructional Television Fixed Services*, 13 FCC Rcd 15920 (1998) (delegating authority to the staff to conduct Section 307(b) analyses with respect to AM applications prior to conducting auctions of competing applications)). In contrast, the *NCE Order* noted that the point system analysis conducted

Accordingly, it is ordered that the application of New Jersey Public Broadcasting Authority is accepted for filing. It is also ordered that New Jersey Public Broadcasting Authority is TENTATIVELY SELECTED to be awarded a construction permit (File No. BNPED-20000303ABK) for a new NCE FM station in Toms River, New Jersey. Petitions to deny the tentative selectee are due within thirty (30) days following the issuance of a subsequently issued public notice announcing the tentative selection of this application.⁸

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

when Section 307(b) is not determinative is considered a simplified “hearing” for purposes of 47 U.S.C. § 155(c)(1). *See NCE Order*, 15 FCC Rcd at 7420.

⁸ *See* 47 C.F.R. § 73.7004. If any applicant previously raised issues against the tentative selectee, it must refile its objections within this thirty (30) day period.