



Federal Communications Commission  
Washington, D.C. 20554

June 29, 2005

**DA 05-1864**  
***In Reply Refer to:***  
**1800B3-CNZ**

New Jersey Public Broadcasting Authority  
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In Re: NEW (NCE FM), Dover, NJ  
Facility ID No. 92873  
BPED-19990305MA

NEW (NCE FM), Netcong, NJ  
Facility ID No. 93964  
BPED-19990730ME

Applications for NCE FM Construction Permits

**Group No. 990310**

Dear Applicants:

We have before us Group 990310 – two 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.<sup>1</sup> For the reasons below, we determine that New Jersey Public Broadcasting Authority (“NJPBA”) is entitled to a decisive Section 307(b) preference.

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,

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

provided that this constitutes at least 2,000 people, within the proposed station's 60 dBu contour.<sup>2</sup> If more than one applicant in a mutually exclusive group qualifies for a preference, we compare first service population coverage totals.<sup>3</sup> 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.<sup>4</sup> 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 Netcong, New Jersey, and Christian Educational Association ("CEA") would serve Dover, 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.<sup>5</sup> CEA asserts that it is entitled to a first service preference.<sup>6</sup> CEA does not qualify for a first service comparative preference, however, because, contrary to its claim, it does not provide a new first service to its entire proposed service area.<sup>7</sup> In addition, because CEA does not provide us with the number of people it proposes to serve with a new second service, we next consider only whether NJPBA would provide a combined first and second service to 10 percent of the population (and to at least 2,000 people) within its proposed 60 dBu. Based on NJPBA's submissions and calculations, it appears that NJPBA qualifies for a comparative preference. Accordingly, pursuant to Section 73.7004 of the Commission's rules, we identify NJPBA as the tentative selectee. Group 990310 thus will not proceed to a point hearing.<sup>8</sup>

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<sup>2</sup> 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, neither 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.

<sup>3</sup> 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).

<sup>4</sup> *Id.*

<sup>5</sup> NJPBA's 60 dBu contour encompasses 195,009 people. NJPBA's claimed aggregated first and second service is 194,760 people. CEA's 60 dBu contour encompasses 212,678 people. CEA's claimed aggregated first and second service is 212,678 people.

<sup>6</sup> CEA claims to provide 212,678 people with new first service.

<sup>7</sup> A majority of the proposed new Dover station's 60 dBu contour overlaps with NCE Station WNTI(FM), Hackettstown, New Jersey. It also overlaps with NCE Station WJSV(FM), Morristown, New Jersey.

<sup>8</sup> 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 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.

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. BPED-19990730ME) for a new NCE FM station in Netcong, 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.<sup>9</sup>

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>9</sup> 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.