



Federal Communications Commission
Washington, D.C. 20554

June 29, 2005

DA 05-1865
In Reply Refer to:
1800B3-CNZ

North Valley Educational Community Radio, Inc.
c/o Dennis J. Kelly, Esq.
Law Offices of Dennis J. Kelly
P.O. Box 6648
Annapolis, MD 21401

Northern California Educational Broadcasters
c/o Alan C. Campbell, Esq.
Irwin, Campbell & Tannenwald, PC
1730 Rhode Island Avenue, NW
Suite 200
Washington, DC 20036

State of Oregon
c/o Ernest T. Sanchez, Esq.
The Sanchez Law Firm
2000 L Street, NW
Suite 200
Washington, DC 20036

In Re: NEW (NCE FM), Paradise, CA
Facility ID No. 77178
BPED-19950720MA
Application for new NCE Construction Permit

NEW (NCE FM), Tehama, CA
Facility ID No. 81539
BPED-19960416MB
Application for new NCE Construction Permit

NCE Station KNCA(FM), Burney, CA
Facility ID No. 50621
BPED-19960417MD
Application to Make Major Change

Group No. 95077E

Dear Counsel:

We have before us Group 95077E – three mutually exclusive applications for noncommercial educational (“NCE”) FM stations serving different communities.¹ 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.² For the reasons

¹ In this instance, one of the applications is for a permit to construct a new NCE FM station at Paradise, California, one of the applications is for a permit to construct a new NCE FM station at Tehama, California, and the other is an application to make major changes to NCE Station KNCA(FM), Burney, California.

² See 47 U.S.C. § 307(b); 47 C.F.R. § 73.7002(a).

below, we determine that the State of Oregon Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University (“State of Oregon”) 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, provided that this constitutes at least 2,000 people, within the proposed station’s 60 dBu contour.³ If more than one applicant in a mutually exclusive group qualifies for a preference, we compare first service population coverage totals.⁴ 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.⁵ 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, NCE Station KNCA(FM) licensed to State of Oregon serves Burney, California, North Valley Educational Community Radio, Inc.(“North Valley”) would serve Tehama, California, and Northern California Educational Broadcasters (“NCEB”) would serve Paradise, California. State of Oregon proposes to make major modifications to existing station KNCA(FM). Accordingly, we consider only KNCA(FM)’s area of newly added service in our 307(b) analysis.⁶ 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.⁷ Only NCEB and State of Oregon assert that they are entitled to a first service preference.⁸ Based on the applicants’ submissions and calculations, it appears that State of Oregon qualifies for a comparative preference, because it would provide a new first service to at least 5,000 more persons than NCEB. Accordingly, pursuant to Section 73.7004 of the Commission’s rules, we identify State of Oregon as the tentative selectee. Group 95077E thus will not proceed to a point hearing.⁹

³ 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.

⁴ 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).

⁵ *Id.*

⁶ See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 16 FCC Rcd 5074, 5094 (2001).

⁷ The newly added area within State of Oregon’s 60 dBu contour encompasses 169,906 people. State of Oregon’s claimed aggregated first and second service within the area of newly added service is 141,559 people. NCEB’s 60 dBu contour encompasses 48,900 people. NCEB’s claimed aggregated first and second service is 10,967 people. North Valley’s 60 dBu contour encompasses 83,843 people. North Valley’s claimed aggregated first and second service is 45,210 people.

⁸ State of Oregon claims to provide 141,559 people with new first service within the area of newly added service. NCEB claims to provide 10,967 people with new first service.

⁹ 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

Accordingly, it is ordered that State of Oregon Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University is TENTATIVELY SELECTED to be awarded a construction permit (File No. BPED-19960417MD) to make major modifications to NCE Station KNCA(FM), Burney, California. 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.¹⁰

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

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.

¹⁰ 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.