



Federal Communications Commission  
Washington, D.C. 20554

July 29, 2005

**DA 05-2027**  
***In Reply Refer to:***  
**1800B3-CNZ**

Mr. Scott D. Fowler  
President  
Berks Radio Association  
97 Yeager Road  
Lenhartsville, PA 19534

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American Family Association, Inc.  
P.O. Drawer 2440  
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In Re: NEW (NCE FM), Shenandoah, PA  
Facility ID No. 90214  
BPED-19980213ME

NEW (NCE FM), Kutztown, PA  
Facility ID No. 91704  
BPED-19980923MA

Applications for NCE FM Construction Permits

**Group No. 9803X3**

Dear Applicants:

We have before us Group 9803X3 – 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 American Family Association, Inc. (“AFA”) 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, AFA would serve Shenandoah, Pennsylvania, and Berks would serve Kutztown, Pennsylvania. 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> Each applicant also asserts that it is entitled to a first service preference because its proposed facility would provide a first service to at least 10 percent of the population (and at least 2,000 persons) within its respective 60 dBu contour.<sup>6</sup> Based on the applicants' submissions and calculations, it appears that AFA qualifies for a comparative preference, because it would provide a new first service to at least 5,000 more persons than Berks. Accordingly, pursuant to Section 73.7004 of the Commission's rules, we identify AFA as the tentative selectee. Group 9803X3 thus will not proceed to a point hearing.<sup>7</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) ("*March 22 Public Notice*"). 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 a "snap shot" date of June 4, 2001. With respect to population information, applicants were to use the 2000 Census data, if available by June 4, 2001. See *March 22 Public Notice*, 16 FCC Rcd at 6894. AFA claims to use 2000 Census data. Berks Radio Association ("Berks") indicates, however, that it used 1990 Census data.

<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> AFA's 60 dBu contour encompasses 179,074 people. AFA's claimed aggregated first and second service is 176,878 people. Berks' 60 dBu contour encompasses 67,573 people. Berks' claimed aggregated first and second service is 56,925 people.

<sup>6</sup> AFA claims to provide 82,331 people with new first service. Berks claims to provide 40,605 people with new first service.

<sup>7</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 American Family Association, Inc. is TENTATIVELY SELECTED to be awarded a construction permit (File No. BPED-19980213ME) for a new NCE FM station in Shenandoah, Pennsylvania. Petitions to deny the tentative selectee are due within thirty (30) days following the issuance of a subsequently issued public notice announcing the acceptance and tentative selection of this application.<sup>8</sup>

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>8</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.