



Federal Communications Commission
Washington, D.C. 20554

July 29, 2005

DA 05-2189
In Reply Refer to:
1800B3-CNZ

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Brazos Educational Radio
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Rev. Robert Owens
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Brazos Valley Council on Alcohol and Substance Abuse
c/o Mark Van Bergh, Esq.
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In Re: NEW (NCE FM), Bryan, TX
Facility ID No. 90456
BPED-19980410MA

NEW (NCE FM), Caldwell, TX
Facility ID No. 91682
BPED-19980922MB

NEW (NCE FM), Bryan, TX
Facility ID No. 91619
BPED-19980909MP

NEW (NCE FM), College Station, TX
Facility ID No. 90727
BPED-19980515MO

Applications for NCE FM Construction Permits

Group No. 9804X2

Dear Counsel:

We have before us Group 9804X2 – four 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 Philos Broadcast, Inc. (“Philos”) 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.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, Philos would serve Caldwell, Texas, Houston Christian Broadcasters, Inc. (“HCB”) would serve Bryan, Texas, BER would serve College Station, Texas, and Brazos Valley Council on Alcohol and Substance Abuse (“BVC”) would serve Bryan, Texas. Philos and HCB claim that they would provide a new first or second NCE service to 10 percent of the population, and to at least 2,000 people, within their respective service areas, and therefore, that they are eligible for a fair distribution preference.⁵ However, Philos is the only applicant to assert that it is entitled to a first service preference.⁶ Based on Philos’ submissions and calculations, it appears that it qualifies for a first service comparative preference, so no second service analysis is undertaken. Accordingly, pursuant to Section 73.7004 of the Commission’s rules, we identify Philos as the tentative selectee. Group 9804X2 thus will not proceed to a point hearing.⁷

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

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 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. All but one of the applicants claims to use 2000 Census data. Brazos Educational Radio (“BER”) indicates that it used 1990 Census data.

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 Philos’ 60 dBu contour encompasses 25,307 people. Philos’ claimed aggregated first and second service is 24,566 people. HCB’s 60 dBu contour encompasses 162,630 people. HCB’s claimed aggregated first and second service is 19,550 people.

⁶ Philos claims to provide 8,063 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

Accordingly, it is ordered that the application of Philos Broadcast, Inc. is accepted for filing. It is also ordered that Philos Broadcast, Inc. is TENTATIVELY SELECTED to be awarded a construction permit (File No. BPED-19980922MB) for a new NCE FM station in Caldwell, Texas. 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

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.

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.