



**Federal Communications Commission
Washington, D.C. 20554**

August 1, 2008

DA 08-1836

In Reply Refer to:

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State of Oregon
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In Re: State of Oregon
KNCA(FM), Burney, CA
Facility ID No. 50621
BPED-19960417MD

Application for NCE FM Construction Permit
MX Group No. 95077E

Dear Applicants:

We have before us the above-captioned application of the State of Oregon Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University (the "State of Oregon") for a major modification to noncommercial educational ("NCE") FM Station KNCA(FM), Burney, California (the "Application"). We also have before us a Petition for Reconsideration (the "Petition") filed by North Valley Educational Community Radio, Inc. ("NVECR").¹ For the reasons set forth below, we dismiss the Petition and grant the Application.

The State of Oregon was among three mutually exclusive applicants for an NCE FM station construction permit.² Pursuant to established procedures,³ the Media Bureau (the "Bureau") determined

¹ See July 29, 2005, NVECR Petition. The State of Oregon filed an Opposition on August 29, 2005. NVECR filed a Reply to the Opposition on September 13, 2005.

² Group 95077E consisted of the applications filed by the State of Oregon, NVECR, and Northern California Educational Broadcasters ("NCEB"). KNCA(FM), licensed to the State of Oregon, serves Burney, California; NVECR proposed to serve Tehama, California; and NCEB proposed to serve Paradise, California.

³ See 47 C.F.R. § 73.7002; see also *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000) ("*NCE Comparative Order*"), *aff'd*, Memorandum Opinion

that the State of Oregon was entitled to a decisive preference under Section 307(b) of the Communications Act of 1934, as amended (the “Act”),⁴ and identified the State of Oregon as the tentative selectee in NCE MX Group 95077E.⁵ In its Petition, NVECR seeks reconsideration of the Commission’s NCE Section 307(b) procedures, which were applied in the *Tentative Selectee Letter*, and its tentative conclusion with respect to NCE MX Group 95077E. Specifically, NVECR avers that the Section 307(b) analysis for NCE stations is arbitrary, capricious, and contrary to law because it differs from the Section 307(b) analysis utilized for commercial stations.

We find that NVECR’s Petition is procedurally improper. Section 1.106(a)(1) of the Commission’s Rules specifically prohibits petitions for reconsideration of interlocutory actions.⁶ An interlocutory action is an interim determination on a matter involving an application; it does not grant or deny the application. The *Tentative Selectee Letter* was an interlocutory action, not a final action on the underlying applications in NCE MX Group 95077E ripe for reconsideration.⁷ Confirming the interlocutory nature of the *Tentative Selectee Letter*, the Bureau repeatedly emphasized that the selection was “tentative” and took no final action with regard to the State of Oregon’s Application.⁸

Accordingly, IT IS ORDERED, That the Petition for Reconsideration, filed on July 29, 2005, by North Valley Educational Community Radio, IS DISMISSED.⁹

We have evaluated the Application and find that it complies with all pertinent statutory and regulatory provisions and that its grant would further the public interest, convenience, and necessity.¹⁰ Accordingly, IT IS FURTHER ORDERED, That the application of the State of Oregon Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University (File No.

and Order, 16 FCC Rcd 5074, 5105 (2001) (“*NCE MO&O*”), *partially reversed on other grounds, NPR v. FCC*, 254 F.3d 226 (D.C. Cir. 2001) (delegating authority to the Bureau to make Section 307(b) determinations in NCE cases).

⁴ 47 U.S.C. § 307(b).

⁵ See *North Valley Educational Community Radio, Inc.*, Letter, 20 FCC Rcd 11688 (2005) (“*Tentative Selectee Letter*”). The Bureau concluded that the State of Oregon’s proposal would provide a first local service to at least 5,000 more people than NCEB, the only other applicant to assert that it was entitled to a first service preference. Specifically, the State of Oregon claimed to provide 141,559 people with new first service within the area of newly added service; NCEB claimed to provide 10,967 people with new first service.

⁶ See 47 C.F.R. §1.106(a)(1).

⁷ See *Bennett v. Spear*, 520 US 154, 178 (1977) (holding an agency’s action is final and reviewable only if, *inter alia*, it “mark[s] the ‘consummation’ of the agency’s decisionmaking process - it must not be of a merely tentative or interlocutory nature.”) (internal quotes and cites omitted).

⁸ See *Tentative Selectee Letter*, 20 FCC Rcd at 11689 (explaining that “we identify State of Oregon as the tentative selectee.... State of Oregon is TENTATIVELY SELECTED to be awarded a construction permit.... 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.”) (emphasis in original).

⁹ Upon final action, *i.e.*, grant, dismissal, or denial of any application identified in the *Tentative Selectee Letter*, a party may seek reconsideration or review of such action consistent with the requirements of the Commission’s Rules. See 47 C.F.R. §§1.106(b)(1) and 1.115.

¹⁰ We note that NVECR does not allege that the State of Oregon is unqualified to be a Commission licensee.

BPED-19960417MD) for a major modification to NCE FM Station KNCA(FM), Burney, California, IS GRANTED CONDITIONED UPON its compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year holding period for applicants that are awarded permits based on a dispositive Section 307(b) preference.

IT IS FURTHER ORDERED, That the mutually exclusive applications of North Valley Educational Community Radio, Inc. (File No. BPED-19950720MA) and Northern California Educational Broadcasters (File No. BPED-19960416MB) ARE DISMISSED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Alan C. Campbell, Esq.