



Federal Communications Commission
Washington, D.C. 20554

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DA 05-1589
In Reply Refer to:
1800B3-CNZ

Kent State University
c/o Margaret L. Miller, Esq.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Ave., NW
Suite 800
Washington, DC 20036

Mr. Carl Sullivan
Riverside Youth and Rehabilitation Center, Inc.
d/b/a Riverside Ministries
2620 South River Rd.
Zanesville, OH 43701

In Re: NEW (NCE FM), Newark, OH
Facility ID No. 89343
BPED-19971117MS
Application for a Construction Permit

NCE Station WKRW-FM, Wooster, OH
Facility ID No. 34046
BPED-19980420IA
Application to Make Minor Change

Group No. 971110

Dear Applicants:

We have before us Group 971110 – two 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 of whether grant of any of the applications would further the goals enunciated in Section 307(b) of the Communications Act of 1934, as amended, for fair, efficient, and equitable distribution of radio service among communities.² For the reasons below, we determine that Riverside Youth and Rehabilitation Center, Inc. d/b/a Riverside Ministries (“Riverside”) 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

¹ In this instance, one of the applications is for a permit to construct a new NCE FM station at Newark, Ohio, and the other is an application to make minor changes to NCE Station WKRW-FM, Wooster, Ohio.

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

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 WKRW-FM licensed to Kent State University ("KSU") serves Wooster, Ohio, and Riverside would serve Newark, Ohio. KSU proposes to make minor modifications to existing station WKRW-FM. Accordingly, we consider only WKRW-FM's area of newly added service in our 307(b) analysis.⁶ Each applicant claims that it is eligible for a fair distribution preference because each would provide a new first or second service to 10 percent of the population within its respective service area.⁷ Each applicant 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.⁸ Based on the applicants' submissions and calculations, Riverside qualifies for a comparative preference, because it would provide a new first service to at least 5,000 more persons than KSU. Accordingly, pursuant to Section 73.7004 of the Commission's rules, we identify Riverside as the tentative selectee. Group 971110 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, 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.

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 Riverside's 60 dBu contour encompasses 153,094 people. Riverside's claimed aggregated first and second service is 54,945 people. The newly added area within KSU's 60 dBu contour encompasses 27,618 people. KSU's claimed aggregated first and second service within the area of newly added service is 18,626 people.

⁸ Riverside claims to provide 30,997 people with new first service. KSU claims to provide 5,538 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 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 Riverside Youth and Rehabilitation Center, Inc. d/b/a Riverside Ministries, is TENTATIVELY SELECTED to be awarded a construction permit (File No. BPED-19971117MS) for a new NCE FM station in Newark, Ohio. 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

¹⁰ See 47 C.F.R. § 73.7004.