



Federal Communications Commission
Washington, D.C. 20554

May 18, 2022

DA 22-548
In Reply Refer to:
1800B3-ATS
Released May 18, 2022

Mr. Jeff Cotton
Open Sky Radio Corporation
42528 County Road 1
Lake City, CA 96115
(sent by electronic mail to: jc@openskyradio.org)

Mr. Keenan Meredith
Full Potential Ministry
170 Weston Street
Imlay City, MI 48444
(sent by electronic mail to: keno_tiger@yahoo.com)

Mr. Kyle R. Laferty
Community Service Broadcasting Foundation
188 Ridgeview
Auxier, KY 41602
(sent by electronic mail to: rlaferty@yahoo.com)

In re: **NCE MX Group 130**

**Community Service Broadcasting
Foundation**

New NCE, Clarksdale, Mississippi
Facility ID No. 767183
File No. 0000167371

Open Sky Radio Corporation

New NCE, Clarksdale, Mississippi
Facility ID No. 765274
File No. 0000166988

Full Potential Ministry

New NCE, Coahoma, Mississippi
Facility ID No. 768007
File No. 0000167883

Petition to Deny

Dear Mr. Cotton, Mr. Meredith, and Mr. Laferty,

We have before us three mutually exclusive applications filed by Community Service Broadcasting Foundation (CSBF), Open Sky Radio Corporation (OSRC), and Full Potential Ministry (FPM) for construction permits for new noncommercial educational (NCE) FM stations in various communities in Mississippi, which the Media Bureau (Bureau) designated as NCE MX Group 130.¹ The Bureau identified the FPM Application as the tentative selectee of the group.² We also have before us the Petition to Deny (Petition) the FPM Application filed by OSRC.³ For the reasons set forth below, we grant the Petition, rescind our tentative selection of the FPM Application, and identify the OSRC Application as the new tentative selectee of NCE MX Group 130.

Background. The subject applications were filed during the 2021 NCE filing window, which was open from November 2, 2021, until November 9, 2021.⁴ In the *Third Fair Distribution Order*, the Bureau conducted a fair distribution analysis pursuant to section 307(b) of the Communications Act of 1934, as amended (Act),⁵ determined that both the OSRC Application and the FPM Application were eligible for a fair distribution preference, and because the FPM Application's proposed second NCE service exceeded the OSRC Application's second NCE service by more than 5,000 people, identified the FPM Application as the tentative selectee of NCE MX Group 130.⁶

In the Petition, OSRC argues that the Bureau improperly relied on a revised fair distribution document that FPM provided after the close of the window. OSRC notes that the document originally attached to the FPM Application did not include population numbers.⁷ OSRC also notes that on November 12, 2021, after the close of the window, the Bureau staff uploaded to the FPM Application a revised document containing population figures.⁸ OSRC argues that in the 2007 NCE filing window, the

¹ *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Education Stations; Opens Window to Accept Settlements and Technical Amendments*, MB Docket No. 20-343, Public Notice, DA 21-1476 (MB Nov. 29, 2021); *see also* File Nos. 0000167371 (CSBF Application), 0000166988 (OSRC Application), and 0000167883 (FPM Application).

² *Threshold Fair Distribution Analysis of 16 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-356 at 6-7, para. 19 (MB Apr. 4, 2022) (*Third Fair Distribution Order*). NCE MX Group 130 originally included a fourth application filed by Elijah Radio (ER). *See* File No. 0000167031. Following the adoption of the *Third Fair Distribution Order*, ER filed an amendment that resolved its application's mutual exclusivities and rendered it a singleton.

³ Pleading File No. 0000189644 (filed Apr. 23, 2022).

⁴ *Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB 2021).

⁵ *See Third Fair Distribution Order* at 2-3, paras. 3-6.

⁶ *Id.* at 6-7, para. 19.

⁷ Petition at 1-2. *See also* FPM Application at Attachment "First-Second Service Population Served.docx". This document stated:

First Service Population Served (White Area) =
First & Second Service Population Served (White + Gray Area) =
Total Population = 72446 (Ten Percent of Population =)
Total Area =

⁸ Petition at 2-3. *See also* FPM Application at Attachment "167883 First-Second Service Population Served.pdf". This document stated:

First Service Population Served (White Area) = 0
First & Second Service Population Served (White + Gray Area) = 26425

Bureau consistently rejected fair distribution claims where population numbers were missing,⁹ and that the filing instructions for the 2021 NCE Filing Window stated that any supporting documents must be filed prior to the close of the filing window.¹⁰ Accordingly, OSRC argues that the Bureau should reject FPM's fair distribution claim and declare the OSRC Application the tentative selectee of NCE MX Group 130. FPM did not file an opposition to the Petition.¹¹

Discussion. Pursuant to section 309(d) of the Act,¹² petitions to deny and informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.¹³

After the close of the filing window, the Bureau staff received an email from FPM's engineer stating that he had experienced problems with the LMS filing system, and asked to replace the original fair distribution exhibit with a revised one.¹⁴ The Bureau staff misconstrued this email as suggesting that LMS had not accepted the original fair distribution exhibit. However, LMS had in fact accepted this exhibit, which was missing several population figures, and it is clear that FPM simply uploaded the incorrect attachment. "The Commission and the Bureau have consistently rejected similar post-window amendments, which claim, for the first time, a fair distribution preference, or which attempt to correct population figures."¹⁵ We therefore agree with OSRC that the *Third Fair Distribution Order* erred in relying on FPM's post-window revised population exhibit. Accordingly, we grant the Petition and rescind our tentative selection of the FPM Application.

We will therefore conduct a new fair distribution analysis. NCE MX Group 130 currently consists of three applications to serve different communities in Mississippi. CSBF and OSRC each proposes to serve Clarksdale; and FPM proposes to serve Coahoma. OSRC and FPM each asserts that it is eligible for a fair distribution preference.¹⁶ CSBF does not and is therefore eliminated. Additionally,

Total Population = 61257 (Ten Percent of Population = 6125)
Total Area = 5058

⁹ Petition at 3, note 9 (citations omitted).

¹⁰ Petition at 5 (citing *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021 Window*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 11458 (MB 2021)).

¹¹ See 47 CFR § 1.45(b) (oppositions must be filed with 10 days of a petition to deny).

¹² 47 U.S.C. § 309(d).

¹³ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F. 2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹⁴ Email from Ed Czelada to Rodolfo Bonacci, Audio Division, FCC Media Bureau (Nov. 10, 2021, 4:29 PM).

¹⁵ *Comparative Consideration of Seven Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 30 FCC Rcd 5161, 5170, paras. 26-27 (2015); compare *Threshold Fair Distribution Analysis of 13 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-477 at n.38 (MB May 2, 2022) (Bureau affords applicant whose attachments were corrupted opportunity to provide supporting documents).

¹⁶ See OSRC Application and FPM Application, Fair Distribution of Service Section, and associated exhibits. . OSRC's 60 dBu contour encompasses 19,479 people, and its claimed combined first and second NCE service is

because FPM did not provide complete population figures before the close of the filing window, we will not consider its fair distribution claim, and FPM is also eliminated. OSRC is therefore the tentative selectee for NCE MX Group 130.

Conclusion/Action. Accordingly, **IT IS ORDERED** that the Petition to Deny filed on April 23, 2022, by Open Sky Radio Corporation **IS GRANTED**.

IT IS FURTHER ORDERED, that the tentative selection of the application of Full Potential Ministry (File No. 0000167883) for a construction permit for a NCE FM station in Coahoma, Mississippi, **IS RESCINDED**.

IT IS FURTHER ORDERED, that the Application filed by Open Sky Radio Corporation (File No. 0000166988) is **TENTATIVELY SELECTED** to be awarded a construction permit for a new NCE FM station in Clarksdale, Mississippi, and its application **IS ACCEPTED FOR FILING**, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, **TO DISMISS** the mutually exclusive applications of Community Service Broadcasting Foundation, Inc. (File No. 0000167371) and Full Potential Ministry (File No. 0000167883), and **TO GRANT** the application of Open Sky Radio Corporation (File No. 0000166988) **CONDITIONED UPON** that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):

Edward T. Czelada (sent by electronic mail to: ed@voicetracking.com)
(Contact Representative for Full Potential Ministry)

18,718 people. Therefore, OSRC would provide a combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.