

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

In re Applications of)	
)	
Mississippi Authority for Educational Television)	File No. BPET-19960919KK
)	Facility ID No. 86651
Community Television Educators)	
)	File No. BPET-19970331SD
For a Construction Permit for a New)	Facility ID No. 83734
Noncommercial Educational Television)	
Station on Channel *21, Clarksdale, Mississippi)	

MEMORANDUM OPINION AND ORDER

Adopted: October 16, 2003

Released: October 23, 2003

By the Commission:

1. The Commission has before it for consideration the above-captioned mutually exclusive applications of the Mississippi Authority for Educational Television (MAET) and Community Television Educators (CTE), each seeking a construction permit for a new noncommercial educational television station to operate on Channel *21 at Clarksdale, Mississippi.¹

MUTUALLY EXCLUSIVE SELECTION PROCESS

2. In cases of mutually exclusive applications for new noncommercial educational (NCE) television stations to operate on reserved channels, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of seven merit points based on four criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which this spectrum has been reserved.² First, three points are awarded to applicants who have been local and established for at least two years.³ Applicants with a headquarters, campus, or 75% of board member

¹ On March 22, 2001, the Bureau issued a Public Notice announcing a deadline of June 4, 2001, by which applicants in closed groups of noncommercial educational broadcast station applications must file either settlements/minor technical amendments to resolve application conflicts, or supplements to claim points under the newly-adopted NCE comparative standard discussed below. *See Public Notice*, 16 FCC Rcd 6893 (2001). The Public Notice also established June 4, 2001, as the date on which applicants' non-technical comparative qualifications would be generally fixed. The Bureau subsequently extended the deadline for settlements, engineering solutions and point supplements through July 19, 2001. *See Public Notice*, 16 FCC Rcd 10892 (2001). MAET and CTE both filed point supplements by the July 19th deadline.

² *Report and Order, Comparative Standards for Noncommercial Educational Applicants*, 15 FCC Rcd 7386 (2000); *Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 10549 (2001); *Memorandum Opinion and Second Order on Reconsideration*, 17 FCC Rcd 13132 (2002); *appeal pending, American Family Association, Inc., et al. v. FCC & USA*, No. 00-1310 (D.C. Circuit); *see also* 47 C.F.R. § 73.7003.

³ NCE organizations involved in pending closed group proceedings, such as the applicants here, are considered "established" if they have operated continuously as local entities since June 4, 1999.

residences within 25 miles of the reference coordinates of the community of license are considered local,⁴ and governmental units are considered local within their areas of jurisdiction. Second, two points are awarded for local diversity of ownership if there is no overlap of the principal community contour of the proposed station and any other station attributable to the applicant, and the applicant's governing documents include a provision to maintain that diversity in the future. Third, two points will be awarded for certain state-wide networks providing programming to accredited schools, which cannot claim a credit for local diversity of ownership. Fourth, one point is awarded to an applicant if its proposed area and population is 10% greater than the next best proposal, or two points if 25% greater than the next best proposal. The tentative selectee is the applicant with the highest score.

3. Under this comparative selection process, the applicants are awarded points based on the following criteria:

Established Local Applicant. MAET is a Mississippi governmental entity established by the State of Mississippi to "have the responsibility for the administration, operation, control and supervision of educational television and radio in Mississippi." As such, it is local within the State of Mississippi, and all of its officers and directors reside in Mississippi.⁵ For over thirty years, MAET has been the licensee of a number of noncommercial educational television and FM radio stations throughout the State of Mississippi. Thus, MAET is entitled to three points because it is an established local applicant. CTE is a nongovernmental entity headquartered in Texas, and at least 75% of its governing board does not reside within 25 miles of the reference coordinates of Clarksdale. Accordingly, CTE is entitled to no points.

Diversity of Ownership. MAET is the licensee of a number of television stations in Mississippi and certified that it is not entitled to any points under this criterion. CTE certified that the principal community contour of its proposed station does not overlap the principal community contour of any other television station in which any party to the application has an attributable interest, that its governing documents require that such diversity be maintained, and that it has placed documentation of this diversity in its local public inspection file and submitted copies to the Commission. Accordingly, CTE is entitled to two points.

State-wide Networks. MAET certifies that it qualifies for state-wide network points under Section 73.7003(b) of the Commission's rules, because it is a public organization, without direct authority over schools, that regularly provides programming to all full-time elementary and secondary schools within the State of Mississippi, in furtherance of their curriculum. MAET also submits documentation regarding the number of accredited schools its Learning Services Division serves, as well as detailed telecourse information. Accordingly, MAET is entitled to two points.

Technical Parameters. MAET's proposed Grade B contour encompasses 8,237 square kilometers with a population of 120,051. CTE's proposed Grade B contour encompasses 20,182 square kilometers with a population of 972,766. Because the area and population within CTE's Grade B contour is more than 25% greater than the area and population within MAET's Grade B contour, CTE is entitled to two points under this criterion.

⁴ An applicant relying on local board residence to claim points as an established local applicant must demonstrate that its governing documents, *i.e.*, by-laws, require that such localism be maintained for at least four years of station operations.

⁵ Pursuant to the Mississippi Code, the Board is composed of seven members, four of whom are appointed by the Governor, one member appointed by the State Board for Community and Junior Colleges, one member appointed by the Trustees of the State Institutions of Higher Learning, and one member appointed by the State Superintendent of Public Education.

4. **Total.** MAET is entitled to three points as an established local entity and two points as a state-wide network, for a total of five points. CET is entitled to two points for diversity of ownership, and two points for serving the largest area and population. Thus, MAET is the tentative selectee.

ACCEPTABILITY STUDY

5. Once we select a tentative selectee pursuant to our mutually exclusive selection process, we consider whether the tentative selectee's application has defects. If a tentative selectee's application is found unacceptable, it is returned to the applicant. The applicant is then given one opportunity to submit a curative amendment, provided that the amendment is minor and that the application, as amended, has the same number of qualitative points as originally claimed, or more than the points claimed by the next highest applicant. If found acceptable, the tentative selectee's application is placed on a Broadcast Applications Public Notice, and petitions to deny may be filed within 30 days following release of the public notice.

6. Noncommercial educational broadcast stations will be licensed only to "nonprofit educational organizations upon a showing that the proposed stations will be used primarily to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service."⁶ MAET has certified its compliance with these requirements. We also find the application to be complete and in compliance with the Commission's technical rules.

7. Based upon the record before us, MAET appears to be fully qualified to become the licensee of a new noncommercial educational television station at Clarksdale, Mississippi. We conclude that grant of its application would serve the public interest, convenience and necessity. Accordingly, the staff is directed to issue a public notice announcing MAET's acceptability and establishing a deadline for the filing of petitions to deny.⁷

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶ See 47 C.F.R. Sec. 73.621(a).

⁷ In view of the pending appeal of our mutually exclusive selection process, any subsequent grant of MAET's application will be conditioned on the outcome of *American Family Association, Inc., et al. v. FCC & USA*, Nos. 00-1310, et al. (D.C. Circuit).