

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

In the Matter of)	
)	
La Dov Educational Outreach, Inc.	)	File No. BPEDT-19900312KG
	)	Facility No. 36148
)	
Calvary Christian Center, Inc.	)	File No. BNPEDT-20030919AAV
	)	Facility ID No. 159499
)	
ESP Technology Community Broadcasters	)	File No. BNPEDT-20030919AAX
	)	Facility ID No. 159507
)	
Rising Tide of Sacramento	)	File No. BNPEDT-20030922ADI
	)	Facility No. 159532
)	
Family Stations, Inc.	)	File No. BNPEDT-20030922ADP
	)	Facility ID No. 159505
)	
KVIE, Inc.	)	File No. BNPEDT-20030922ADW
	)	Facility No. 159263
)	
Amazing Facts, Inc.	)	File No. BNPEDT-20030922AFV
	)	Facility No. 159512
)	
Grant Educational Foundation	)	File No. BNPEDT-20030922AFW
	)	Facility No. 159533
)	
Lesea Educational Broadcasting of Sacramento, Inc.	)	File No. BNPEDT-20030922AFZ
	)	Facility No. 159480
)	
Applications for a Construction Permit for a New Noncommercial Educational Television Station on Channel *43, Sacramento, California)	

MEMORANDUM OPINION AND ORDER

Adopted: July 30, 2008

Released: August 5, 2008

By the Commission:

1. The Commission has before it for consideration the above-captioned mutually exclusive applications of La Dov Educational Outreach, Inc. (La Dov), Calvary Christian Center, Inc. (Calvary), ESP Technology Community Broadcasters (ESP), Rising Tide of Sacramento (Rising Tide), Family Stations, Inc. (Family), KVIE, Inc. (KVIE), Amazing Facts, Inc. (Amazing Facts), Grant Educational Foundation (Grant), and Lesea Educational Broadcasting of Sacramento, Inc. (Lesea), each seeking a construction permit for a new noncommercial educational (NCE) digital television station to operate on Channel *43 at Sacramento, California. Based on our analysis under the NCE comparative selection process, as discussed below, we select Calvary and Grant as the tentative selectees to operate on Channel *43 at Sacramento, California.

I. BACKGROUND

2. On August 8, 2003, the Bureau issued a Public Notice, DA 03-2610, announcing a filing window until September 22, 2003, for the filing of competing applications for a new digital noncommercial educational television station on reserved Channel *43 at Sacramento. Accordingly, competing applications and/or amendments to pending applications – including the NCE point system factors described below – were to be filed prior to the close of the filing window on September 22, 2003. The above-listed applications were on file by the close of the window, but Grant, Calvary and Lesea filed amendments after the close of the filing window.¹ These amendments do not increase the total number of points claimed by any applicant, but rather correct erroneous information previously tendered regarding the basis for claiming those points (*e.g.*, changes the qualification of the applicant from a “state-wide network” to “diversity of ownership”). Since these amendments do not seek to improve the comparative position of the applicants, we find good cause exists for acceptance of the tendered amendments.

II. MUTUALLY EXCLUSIVE SELECTION PROCESS

3. In cases of mutually exclusive applications for new NCE television stations to operate on reserved channels, each application is reviewed pursuant to our comparative process.² 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.³ First, three points are awarded to applicants who have been local and established for at least two years and whose governing documents require that such localism be maintained.⁴ Applicants with a headquarters, campus, or 75 percent of its board members’ residences within 25 miles of the reference coordinates of the community of license are considered local, and governmental units are considered local within their areas of jurisdiction.⁵ 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 percent greater than the next best proposal, or two points if 25 percent greater than the next best proposal. The tentative selectee is the applicant with the highest score. In the event of a tie, the tentative selectee will be determined by which applicant had the fewest station authorizations (licenses and construction permits) in the same service nationally at the time of filing, with a secondary tie-breaker being the applicant with the fewest number of pending new and major change applications in the same service at the time of filing. The final tie-breaker for full service stations will be the imposition of mandatory time sharing.⁶

¹ Grant filed its amendment in January 2004; Calvary filed its amendment in September 2005; and Lesea filed its amendment in April 2006.

² *Report and Order, Comparative Standards for Noncommercial Educational Applicants*, 15 FCC Rcd 7386 (2000); *Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 5074, 5082 (2001); *Memorandum Opinion and Second Order on Reconsideration*, 17 FCC Rcd 13132 (2002); *American Family Association, Inc., v. FCC & USA, aff'd, sub nom.*, 365 F. 3d 1156 (D.C. Cir. 2004); *cert. denied*, 125 S. Ct., 634 (2004).

³ 47 C.F.R. §73.7003.

⁴ 47 C.F.R. §73.7003(b)(1).

⁵ 47 C.F.R. §73.7000.

⁶ *Report and Order*, 15 FCC Rcd at 7418.

4. Under this comparative selection process, the applicants here were awarded points as follows: Established Local Applicant. All of the applicants except Lesea certify that they are entitled to three points as established local applicants. Rising Tide, Grant, Calvary, and Family each certifies that it qualifies as an established local applicant, listing a Sacramento address for the applicant. While Amazing Facts states in its application that its headquarters has been “located in the Sacramento, California area since 1995,” it lists its address as “P. O. Box 1058,” Roseville, California. As the Commission stated, however, “a local headquarters or residence must be a primary place of business or primary residence and not, for example, a Post office box, lawyer’s office, branch office, or vacation home, which would not provide sufficient contact between the station’s decision and policy makers and the area to be served.”⁷ In addition, the application clearly reflects that less than 75 percent of Amazing Facts’ governing board members reside within 25 miles of Sacramento. The same is true with respect to La Dov, whose applicant address is listed as “P. O. Box 900,” Rocklin, California, and less than 75 percent of its governing board members reside within 25 miles of Sacramento. Similarly insufficient is ESP’s certification since the applicant’s address is listed as Abilene, Texas and each of its two governing board members reside in that Texas community. While KVIE also lists its address as “P. O. Box 6,” Sacramento, California, it points out that it has been the long-time licensee of station KVIE(TV/DTV), which is located in Sacramento. Moreover, more than 75 percent of KVIE’s governing board members reside within 25 miles of Sacramento. Accordingly, on the basis of the information before us, KVIE, Rising Tide, Grant, Calvary, and Family have supported their entitlement to three points as established local applicants, and the remaining applicants are entitled to no points under this criterion.

5. Diversity of Ownership. All of the applicants except Family and KVIE certify that the principal community contour of their proposed stations do not overlap the principal community contour of any other television station in which any party to the application has an attributable interest, that their governing documents require that such diversity be maintained, and that they have placed documentation of this diversity in a local public inspection file and have submitted copies to the Commission. On the basis of the information before us, we find LaDov, Rising Tide, Grant, Lesea, Calvary, ESP, and Amazing Facts are entitled to two point for diversity of ownership.

6. State-wide Networks. KVIE, Calvary, Grant, and ESP certify that they are entitled to two points as members of a state-wide network pursuant to Section 73.7003(b) of the Commission’s rules. In amendments, Calvary and Grant reported they are no longer claiming credit as a member of a state-wide network, but rather for diversity of ownership. Thus, they are not entitled to state-wide network points as originally claimed. With respect to ESP, the Commission made clear in the *Report and Order* adopting the comparative point system, “no entity may claim both the diversity credit and state-wide network credit in any particular application.” *Report and Order*, 15 FCC Rcd 7412. Thus, ESP is not eligible for any points under this criterion. The other applicants did not claim any points under this criterion. Thus, only KVIE is entitled to two points for being part of a state-wide network.

7. Technical Parameters. Family’s proposed Grade B contour encompasses 11,120 square kilometers with a population of 2,391,769. KVIE’s proposed Grade B contour encompasses 9,859 square kilometers with a population of 2,063,080. Amazing Facts’ proposed Grade B contour encompasses 11,790 square kilometers with a population of 2,144,816. Grant’s proposed Grade B contour encompasses 12,828 square kilometers with a population of 1,822,150.⁸ Lesea’s proposed Grade B

⁷ *Id.* at 7410.

⁸ In its amendment, Grant states that because no other applicant specifies service to greater than ten percent of the area and population as compared to the other applicants, it has submitted a larger figure of population served based on more current 2000 population figures. We will not factor that greater population served in this analysis since it was based on census information that became available after the “snap shot” date of September 22, 2003, the close of the filing window here.

contour encompasses 13,742 square kilometers with a population of 2,444,213. La Dov's proposed Grade B contour encompasses 9,616 square kilometers with a population of 2,062,233. Calvary's proposed Grade B contour encompasses 14,524 square kilometers with a population of 2,220,974.⁹ ESP's proposed Grade B contour encompasses 4,744 square kilometers with a population of 238,330. Rising Tide's proposed Grade B contour encompasses 18,176 square kilometers with a population of 2,356,768. Because the area and population within Grade B contour of no applicant exceeds by 10 percent or more than the next best proposal, no applicant is entitled to any points under this criterion.

8. Total. Rising Tide, Calvary, Grant, and KVIE each have a total of five points. Family has a total of three points. La Dov, Lesea, ESP, and Amazing Facts each have a total of two points. Thus, there is a four-way tie to be the tentative selectee, and we turn to the tie-breaking mechanism.

9. Tie Breakers. KVIE is the only one of the four tied applicants with an existing station authorization in the same service nationally at the time it filed its application. Under the initial tie breaker, KVIE is therefore eliminated from further consideration.¹⁰ Rising Tide as constituted at the time of filing its application had only a single governing board member and was, therefore, ineligible to hold a noncommercial educational television broadcast authorization since it was not broadly representative of the community's business, civic, cultural, educational, and other elements.¹¹ As the instructions to Question 3 of Section II, FCC Form 340 point out: "[F]or a governing board to be considered representative, the applicant must have at least four different elements of the community among its leadership," and Rising Tide had but a single governing board member. Rising Tide's defect is not curable by any subsequent minor amendment since any augmentation to its governing board membership would represent at least a 50 percent change to its governing board and thus would constitute an impermissible major change to its application. Unlike Rising Tide's application defect, Grant would be able to add up to two new members to its three-member governing board by virtue of a curative minor amendment demonstrating its broad community representation.¹² Accordingly, Grant will be directed to file such minor amendment.

10. Calvary and Grant each certifies that it and the parties to its application have no pending applications for new or major changes to commercial or noncommercial educational television broadcast stations. Thus, the secondary tie-breaker criterion provides no distinction between these tentative selectees. As noted earlier, the ultimate tie-breaker for full service stations is the imposition of mandatory time sharing. The Commission has recognized that time-sharing agreements means that the affected parties may not be able to fully-realize their respective objectives. However, in the absence of enough available frequencies to accommodate full-time operation by all the applicants, some compromise of their objectives is necessary for the use of the public airwaves. Because of the number of parties involved, we would hope that the parties can formulate a settlement or share-time arrangement for their mutual benefits consistent with the goals of the *Comparative Standards for Noncommercial Educational Applicants*.

⁹ As originally filed, Calvary's proposed Grade B contour would encompass 17,372 square kilometers with a population of 2,346,934 persons. We utilize the proffered corrected figures since they will not improve Calvary's comparative posture under this criterion.

¹⁰ *Report and Order*, 15 FCC Rcd at 7418.

¹¹ See *Way of the Cross of Utah, Inc.*, 101 F.C.C. 2d 1368 (1985) (applicant must show that its governing board is broadly representative of the educational, cultural, and civic groups of the community).

¹² See 47 C.F.R. § 73.3572(b).

III. ACCEPTABILITY STUDY

11. Ordinarily, 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, and the applicant is 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.

12. 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."¹³ Calvary and Grant have certified compliance with these requirements. We also find the applications to be complete and in compliance with the Commission's technical rules.

13. Accordingly, IT IS ORDERED that Grant Educational Foundation IS DIRECTED to file, within thirty (30) days of the release of this Order, a minor amendment demonstrating that it is broadly representative of the community's business, civic, cultural, educational and other elements, otherwise its application will be dismissed.

14. IT IS FURTHER ORDERED that Grant Educational Foundation and Calvary Christian Center, Inc. are TENTATIVELY SELECTED to be awarded a construction permit for a new DTV television station to operate on Channel *43 at Sacramento, California. We direct the staff to issue a public notice announcing the tentative selectees and establishing a deadline thirty (30) days thereafter 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 selectees' applications, we direct the staff TO DISMISS the mutually exclusive applications of La Dov Educational Outreach, Inc. (BPEDT-19900312KG), ESP Technology Community Broadcasters (BNPEDT-20030919AAX), Rising Tide of Sacramento (BNPEDT-20030922ADI), Family Stations, Inc. (BNPEDT-20030922ADP), Amazing Facts, Inc. (BNPEDT-20030922AFV), KVIE, Inc. (BNPEDT- 20030922ADW) and Lesea Educational Broadcasting of Sacramento, Inc. (BNPEDT-20030922AFZ).

15. IT IS FURTHER ORDERED that Grant Educational Foundation and Calvary Christian Center, Inc. ARE AFFORDED thereafter a period of ninety (90) days in which to reach a settlement or a mutually acceptable share-time arrangement. Further, we direct the staff TO GRANT the applications of Grant Educational Foundation (BNPEDT-20030922AFW) and Calvary Christian Center, Inc. (BNPEDT-20030919AAV) under the terms of an acceptable settlement or time-sharing agreement CONDITIONED UPON the selectees' compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. Section 73.7005, which sets forth a four-year holding period for applicants that are awarded points by use of a point system.

¹³ 47 C.F.R. § 73.621(a).

16. IT IS FURTHER ORDERED, That in the event the tentative selectees are not able to reach an acceptable settlement or time-sharing arrangement, we direct the staff to DESIGNATE FOR HEARING the tentative selectees' applications to determine the terms of a mandatory time-sharing arrangement.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary