

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

In the Matter of	)	
	)	
Oral Roberts University	)	File No. BPET-19960621KE
	)	Facility ID No. 82349
	)	
Community Television Educators, Inc.	)	File No. BPET-19960930KG
	)	Facility ID No. 84146
For a Construction Permit for a New	)	
Noncommercial Educational Television	)	
Station on DTV Channel *26, Tulsa, OK	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 24, 2008**

**Released: November 19, 2008**

By the Commission: Commissioner Copps concurring and issuing a statement.

1. The Commission has before it for consideration the above-captioned mutually exclusive applications of Oral Roberts University (ORU), and Community Television Educators, Inc. (CTE), each seeking a construction permit for a new noncommercial educational television station to operate on DTV Channel \*26 at Tulsa, Oklahoma.<sup>1</sup> Based on our analysis under the comparative selection process discussed below, we select ORU as the tentative selectee to operate on DTV Channel \*26 at Tulsa, Oklahoma.

**MUTUALLY EXCLUSIVE SELECTION PROCESS<sup>2</sup>**

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 the Commission's 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

<sup>1</sup> The applicants are part of a group of applicants that filed for the subject construction permit, originally specifying Channel \*63 at Tulsa. On November 30, 2004, we granted the joint request of the applicants to substitute DTV Channel \*26 for Channel \*63 at Tulsa. *Report & Order*, 19 FCC Rcd 71383 (2004). In that proceeding, the applicants were ordered to submit to the Commission within 45 days minor change applications for a construction permit (FCC Form 340) specifying DTV Channel \*26 in lieu of TV Channel \*63 at Tulsa. Only ORU and CTE filed such applications; the remaining applicants' applications have been dismissed.

<sup>2</sup> 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' maximum comparative qualifications would be generally established. 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). ORU and CTE filed point supplements by the July 19th deadline. They did not, however, amend their showings after the displacement applications specifying DTV Channel \*26 were filed to account for any resulting technical changes to their point proposals.

for which this spectrum has been reserved.<sup>3</sup> First, three points are awarded to applicants who have been local and established for at least two years.<sup>4</sup> Applicants with a headquarters, campus, or 75 percent of board member residences within 25 miles of the reference coordinates of the community of license are considered local,<sup>5</sup> and governmental units are considered local within their areas of jurisdiction.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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. ORU alone certifies that it has had a campus at its present location in Tulsa since the 1960s and that its by-laws require that this localism will be maintained. Thus, ORU is entitled to three points as an established local applicant.

Diversity of Ownership. CTE alone certifies 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 a local public inspection file and has submitted copies to the Commission. Accordingly, CTE is entitled to two points for diversity of ownership.

State-wide Networks. Neither applicant claims state-wide network points under Section 73.7003(b)(3) of the Commission's rules.

Technical Parameters. The applicants did not submit technical information for the displacement applications specifying DTV Channel \*26. Thus, no points will be awarded under this criterion.

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<sup>3</sup> *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); *aff'd sub nom. American Family Association, Inc., et al. v. FCC & USA*, 365 F. 3d 1156 (D.C. Cir. 2004), *cert. denied*, 125 S. Ct. 634 (2004); *see also* 47 C.F.R. § 73.7003.

<sup>4</sup> *See* 47 C.F.R. §73.7003(b)(1). NCE organizations involved in pending closed group proceedings, such as the applicants here, are considered "established" if they have operated as local entities since June 4, 1999. 17 FCC Rcd at 13135-36.

<sup>5</sup> *See* 47 C.F.R. §73.7000 for definition of "local applicant." 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. 15 FCC Rcd at 7424-26.

<sup>6</sup> *See* 47 C.F.R. §73.7000.

<sup>7</sup> *See* 47 C.F.R. §73.7003(b)(2).

<sup>8</sup> *See* 47 C.F.R. §73.7003(b)(3).

<sup>9</sup> *See* 47 C.F.R. §73.7003(b)(4).

4. **Total.** ORU is entitled to three points as an established local applicant. CTE is entitled to two points for diversity of ownership. Thus, ORU is the tentative selectee.

#### ACCEPTABILITY STUDY

5. Once we select a tentative selectee pursuant to the 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.<sup>10</sup>

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."<sup>11</sup> ORU has demonstrated its compliance with these requirements. We also find the application to be complete and in compliance with the Commission's technical rules. Based upon the record before us, we find ORU fully qualified to become the licensee of a new noncommercial educational television station at Tulsa, Oklahoma.

7. Accordingly, IT IS ORDERED, That Oral Roberts University is TENTATIVELY SELECTED to be awarded a construction permit for a new noncommercial educational DTV television station to operate on Channel \*26 at Tulsa, Oklahoma. We direct the staff to issue a public notice announcing this tentative selectee 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 selectee's application, we direct the staff TO DISMISS the mutually exclusive application of Community Television Educators, Inc. (File No. BPET-19960930KG) and TO GRANT the application of Oral Roberts University (File No. BPET-19960621KE) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. §73.7005, which sets forth a four-year holding period for applicants that are awarded points by use of a point system.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>10</sup> 15 FCC Rcd at 7423.

<sup>11</sup> See 47 C.F.R. § 73.621(a).

**CONCURRING STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

**Re: *Oral Roberts University, Community Television Educators, Inc., for a Construction Permit for a New Noncommercial Educational Television Station on DTV Channel \*26, Tulsa, OK.***

While this item correctly applies the Commission's point system for non-commercial (NCE) television stations, it also reveals a potential concern. Where, as here, neither applicant is part of a state-wide network or proposes a significantly larger coverage area than the other, the point system comes down to two factors: (1) whether the applicant has an "established presence" in the local community for at least two years (three points), and (2) whether the applicant would contribute to diversity in the market because it does not own another local television station (two points).

In this case, Oral Roberts was awarded three points for its lengthy community presence in Tulsa, but receives no diversity points because it already owns another television station in the market. CTE, on the other hand, was awarded two diversity points because it does not yet own a television station in Tulsa, but gets no community presence points because it has not had a local presence for at least two years. The end result is that Oral Roberts was designated the tentative selectee, three points to two.

In essence, our point system favors duopolies for established local entities over giving a single voice to new entrants. Where the new entrant is a distant organization with multiple stations across the country, this may be the correct result. But where the new entrant is truly a local organization that simply has not been in existence for at least two years, it is not self-evident to me that granting a duopoly to the established entity is always preferable. I draw no conclusions about this particular case, but it may be time to revisit the point system to determine whether and how it should be changed going forward.