

FCC MAIL SECTION

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

AUG 19 3 53 PM '92

MM Docket No. 92-187

DISPATCHED BY

In re Applications of

FAMILY STATIONS, INC. File No. BPED-890815MC
(hereafter "Family")
Channel 215B1
Bakersfield, CA

SHEPHERD COMMUNICATIONS, INC. File No. BPED-891113ME
(hereafter "Shepherd")
Channel 215B
Shafter, CA

SKYRIDE UNLIMITED, INCORPORATED File No. BPED-901004MM
(hereafter "Skyride")
Channel 215B
Shafter, CA

For Construction Permit for a
New Noncommercial FM Station

HEARING DESIGNATION ORDER

Adopted: August 5, 1992;

Released: August 19, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new, noncommercial, educational FM station.

2. *Share-time Arrangement.* None of the applicants have indicated that an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 Fed. Reg. 49560 (October 24, 1978). In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement among themselves.

3. *Section 307(b) and Contingent Comparative Issues.* The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to 47 U.S.C. §

307(b), which of the proposals would best provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will also be specified.

4. *Late-Filed Amendments.* Family petitioned for leave to amend its application on December 23, 1991, after the last day for filing amendments as of right. The amendment, dealing with engineering, was filed in response to Commission correspondence. Accompanied by the good cause showing required by 47 C.F.R. § 73.3522(a)(2), the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from any of the above amendment will be disallowed.

5. *Comparative Coverage.* Inasmuch as it appears that there would be a significant difference in the size of the areas and populations which would receive service from the proposals, and since this proceeding involves competing applicants for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, FCC 67-673, released June 8, 1967, 10 RR 2d 215 (1967). Thus, the evidence adduced under this issue will be limited to available non-commercial educational FM signals within the respective service areas.

6. *Conclusion.* Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. **ACCORDINGLY, IT IS ORDERED,** That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications **ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING,** at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) the number of other reserved channel non-commercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

2. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), the extent to which each of the proposed operations will be integrated into the overall cultural and educational objectives of the respective applicants; and whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Family IS GRANTED, and the corresponding amendment (12/23/91) IS ACCEPTED to the extent indicated in paragraph 4.

9. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau