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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM DOCKET NO. 92-33
)	
CENTRAL FLORIDA EDUCATIONAL)	File No. BPED-881207MA
FOUNDATION, INC.)	
Channel 202C3)	
Union Park, Florida)	
)	
BIBLE BROADCASTING NETWORK, INC.)	File No. BPED-890412MJ
Channel 202C2)	
Conway, Florida)	
)	
SOUTHWEST FLORIDA COMMUNITY)	File No. BPED-891127MC
RADIO, INC.)	
Channel 202C2)	
Conway, Florida)	
)	
HISPANIC BROADCAST SYSTEM, INC.)	File No. BPED-891128ME
Channel 202C3)	
Lake Mary, Florida)	
)	
For Construction Permit for a New)	
Noncommercial Educational)	
FM Station)	

To: Administrative Law Judge
Edward J. Kuhlmann

**MASS MEDIA BUREAU'S CONSOLIDATED REPLY TO
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. On August 10, 1992, Central Florida Educational Foundation, Inc. ("Central Florida"), Bible Broadcasting Network, Inc. ("BBN"), Southwest Florida Community Radio, Inc. ("Southwest") and Hispanic Broadcast System, Inc. ("Hispanic") filed their respective Proposed Findings of Fact and Conclusions of Law in the above captioned proceeding. The Mass Media Bureau submits the following consolidated reply. The Bureau's failure to respond to a particular finding of fact or conclusion of law should not be considered a concession to its accuracy or completeness.

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Central Florida

2. Central Florida cites the absence of media from Union Park in support of a claim that Central Florida will provide a first local service. As Central Florida recognizes, a first local transmission service is one of the priorities used by the Commission in a Section 307(b) analysis. However, Central Florida based its claim regarding the needs of Union Park on its exhibit 2, which dealt with the contingent comparative issue. The Joint Exhibit, which was to be the exclusive evidence on the 307(b) issue, is silent on the relative needs of the communities proposed by the respective applicants. Thus, Central Florida may not rely on the needs of Union Park or claim that it is providing a first local transmission service as a basis for determining any 307(b) preference. In any event, the Bureau agrees with Central Florida that, because of its superiority in providing a second noncommercial educational FM service, it deserves a dispositive 307(b) preference over all of the other applicants. See Real Life Educational Foundation of Baton Rouge, Inc., 6 FCC Rcd 2577 (Rev. Bd. 1991); Table of Allotments, FM, Bonita Springs and Cape Coral, FL, 6 FCC Rcd 6966 (MMB 1991).

BBN

3. BBN argues that Central Florida does not merit a dispositive 307(b) preference. In BBN's view, Central Florida's advantage in the provision of a second noncommercial educational service merits no more than a slight preference. In so concluding, however, BBN ignores Real Life, where the Review

Board awarded a moderate preference to an applicant that proposed a second noncommercial service to 22,000 more persons than its competitor. By comparison, Central Florida proposes a second noncommercial service to 45,984 persons more than Hispanic and 58,634 more persons than BBN and Southwest. It follows that the preference awarded Central Florida should be of greater magnitude than that awarded the prevailing applicant in Real Life.

Southwest

4. Southwest contends that Central Florida's second service advantage over Hispanic, BBN and Southwest (45,984 to 58,634 persons) merits no more than a very slight preference because the figures represent less than 10% of the total population within Central Florida's proposed service area. Southwest is mixing apples and oranges. Central Florida proposes a second service which is 33% greater than that proposed by Hispanic and 47% greater than what is proposed by BBN and Southwest. These differences in provision of a second service merit a substantial preference. Compare Real Life. A very slight preference would be warranted only if the differences cited by Southwest existed with respect to proposed service to well served areas. E.g., Family Broadcasting Group, 93 FCC 2d 771, 779 (Rev. Bd. 1983).

Hispanic

5. Although Hispanic provides no framework for analyzing a Section 307(b) issue, it recognizes that Central Florida should receive a preference for its "superior second service coverage." Hispanic Proposed Findings and Conclusions at p. 12.

Nevertheless, Hispanic contends that it should be favored under Section 307(b) because it proposes programming to serve an Hispanic community in excess of 64,000 persons, while Central Florida will focus on biblical, not Hispanic, programming. Whatever merit there may be to Hispanic's claims about its proposed programming and the size of the Hispanic community, the Bureau notes that none of that information appeared in the Joint Exhibit. As noted above, the Joint Exhibit was established as the exclusive evidence for resolving the 307(b) issue. Hence, Hispanic's arguments about the merits of its programming as well as its references to Section 73.502 of the Commission's Rules, are irrelevant to resolving the 307(b) issue.

6. With the proposed dismissals of BBN and Southwest pursuant to a settlement agreement which the applicants in this proceeding filed on August 7, 1992, the choice will be narrowed to Central Florida or Hispanic. In light of the substantial difference in proposed "gray" area service, the Bureau continues

to believe Central Florida should receive a dispositive 307(b) preference.

Respectfully submitted,
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August 21, 1992

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 21st day of August, 1992, sent by regular United States mail, U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Consolidated Reply to Proposed Findings of Fact and Conclusions of Law**" to:

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