

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

RECEIVED
JUN 19 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Reexamination of the Comparative) MM Docket No. 95-31
Standards for Noncommercial)
Educational Applicants)

Petition for Clarification

Connecticut College Broadcasting Association, Inc., licensee of noncommercial educational broadcast station WCNI(FM), New London, Connecticut, hereby requests that the Commission provide clarification regarding the application in certain circumstances of its recent Report and Order in the above-referenced proceeding, which was released on April 21, 2000 (FCC 00-120) and published at 65 Fed. Reg. 36,375 (June 6, 2000).

The Report and Order, as well as the "point system" ultimately adopted therein, appear at all times to contemplate the situation in which two noncommercial educational ("NCE") applicants have filed mutually-exclusive applications for construction permits for entirely new NCE FM stations. However, there are other mutually-exclusive applications currently before the Commission that have resulted from different circumstances. One such circumstance is that involving two existing NCE FM licensees which have filed mutually-exclusive applications to increase signal coverage. This situation would tend to arise when one existing NCE-FM licensee filed an application to increase its signal coverage that constituted a major change and was listed on an "A" cut-

No. of Copies rec'd 0+4
List A B C D E

off list. A second existing licensee then filed a competing application on that “A” cut-off date to increase its signal coverage, which application was mutually-exclusive with the first licensee’s major change application.

All competing applications such as those described above have been left unprocessed for many years. Notice of Proposed Rulemaking, MM Docket No. 95-31, 10 FCC Rcd 2877, 2879 (1995) (although a moratorium or “freeze” on mutually-exclusive NCE-FM applications was announced in this Notice, an unofficial freeze had been in effect for many years preceding it). Naturally, applicants in this situation and which have been waiting many years for action, desire the prompt resolution of their conflicting applications via the application of the comparative criteria which have, at long last, been adopted by the Commission. Accordingly, clarification is hereby requested regarding: 1) the Commission’s intention to apply its newly-adopted “point” system to applicants such as those described above; and 2) the manner in which that system would be applied to those applicants.

This petitioner believes that the point system is appropriate and can be applied in the circumstance described above. What follows is a brief synopsis of the manner in which this petitioner imagines that the point system would, in fact, be applied.

Fair Distribution of Service. This may also be decided as a threshold issue to applications involving existing NCE FM licensees; however, it makes sense only for the proposed, rather than the existing, signal coverage areas to be compared for this purpose,

and for an obvious reason. Only a comparison based upon the service areas proposed by the two applicants will assure that the application that will offer service to areas where no, or only limited, service previously existed. If the comparison included existing service areas, then it would redundantly measure the effect of the signals already broadcast by the stations in question. It would not consider the more relevant question, which is the probable effect of the proposed applications. Only the analysis of the new coverage areas proposed by the two applicants will assure the fulfillment of the purpose of Section 307(b) of the Communications Act, i.e., the most fair and efficient distribution of radio service.

Point System. Diversity of Ownership. The Commission may consider this criterion to be inapplicable, since it analyzes whether the principal community contour (i.e., the 3.16 mv/m contour) of the “proposed station” overlaps the contour of any “commonly controlled station.”¹ In the situation under consideration here, there are no proposed stations, but only proposed additional signal coverage areas. The stations in question are existing ones. Thus, questions are raised as to whether the term “proposed station” refers to the newly-proposed signal coverage area (excluding the existing coverage area), to the total coverage area (including both the existing and the proposed), or to neither or them (since, in the commonly-used senses of these terms, there are no “proposed stations,” but only two existing ones that propose increased coverage).

¹ Report and Order , FCC 00-120 at p. 14, ¶ 29.

However, if the Commission decides to apply this criterion to the situation described here, there would be a valid reason for doing so. In order to achieve the purpose of this criterion, that of fostering the “goal of broadcast diversity by enabling the local public to be served by differing NCE licensees”² it is necessary to consider each existing licensee. If an existing licensee already owns other stations whose signals overlap its principal community contour, then broadcast diversity will be furthered if the application to improve facilities (and expand coverage) filed by a party that does not already own multiple local stations is favored over another one who does own other stations.

Technical Parameters. For the reasons set forth above with respect to the 307(b)/fair distribution analysis, this criterion should only consider the proposed signal areas. All other things being equal, an inherent advantage is already accorded to existing licensees with large existing coverage areas under this criterion, since a larger station will always achieve a larger increase in coverage area than a smaller station if both stations increase coverage by the same percentage. However, there is no logical reason to increase that advantage by considering pre-existing coverage areas under this criterion, since the relevant consideration is which applicant will offer new service. Therefore, only the proposed signal coverage areas (i.e., excluding existing coverage areas) should be compared for purposes of this criterion.

² Id.

Localism. As was the case with regard to the local diversity criterion, this criterion relates not to signal coverage, but goes only to the identity of the applicant. Accordingly, since the Commission has already established a policy favoring “local educational presence,”³ then the applications of local educational organizations for increases in the coverage area of their existing signals should be favored to the same extent that they would be if the application in question was for an entirely new station.

State-Wide Network. The rationale supporting the application of the localism criterion in the case of applications for increases in signal coverage applies to this criterion, as well. If the Commission’s policy is to favor state-wide networks, then there is no reason not to do so where the applicants in question are existing licensees.

Tie Breakers. The first two tie-breakers proposed in the Report and Order, which seek to further diversification (award of permit to applicant with fewest station authorizations, in the case of the first tie-breaker, and award to applicant with fewest pending new and major change applications, in the case of the second), seek to further a worthwhile regulatory goal. This goal is no less worthwhile and there is no logical reason it should apply any less to existing licensees seeking expanded signal coverage than to applicants for new facilities. The third tie-breaker, mandatory time-sharing, does not seem appropriate upon first consideration, but it too, must apply in both situations discussed herein. Existing licensees that might file mutually-exclusive applications for

³ Report and Order at p. 19, ¶¶ 41.

increases in signal coverage would, in virtually every conceivable instance, have less coverage area in common than would applicants for new stations. Therefore, a share-time arrangement would involve a periodic elimination of service to the listeners of one station or the other. Furthermore, because these are existing stations, this loss of service might raise Section 307(b) issues. See, e.g., § 73.3525 of the Commission's Rules. However, aside from complications involving the Communications Act, share-time arrangements have merit both where existing facilities are at issue and where new stations are being contested. In both cases they tend to promote more earnest settlement negotiations, precisely because of their unpopularity. Report and Order at p. 34, ¶ 74.

WHEREFORE, for the reasons and in the manner suggested above, clarification of the application of the new rules set forth in the Report and Order in MM Docket 95-31 is hereby requested.

Respectfully submitted,



Russell C. Powell
Counsel for Connecticut College
Broadcasting Association, Inc.

Thiemann Aitken
908 King Street, Suite 300
Alexandria, Virginia 22314

June 19, 2000