

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**REPLY OF JIMMY SWAGGART MINISTRIES TO OPPOSITION OF REAL LIFE
EDUCATIONAL FOUNDATION OF BATON ROUGE**

Jimmy Swaggart Ministries (“JSM”) hereby replies to the Opposition to its Petition for Clarification and Reconsideration of the Report and Order (the “Order”) filed by Real Life Educational Foundation of Baton Rouge (“Real Life”) in the above-captioned docket.¹ Firstly, JSM objects to Real Life's assertion that the Order represents a wholesale rejection by the Commission of its previous non-commercial educational ("NCE") comparative criteria. The replacement of the comparative hearing process with a streamlined point system in no way implies that the Commission should discard the results of hearings that have already taken place. Secondly, JSM disagrees with Real Life's assertion that separate communities of license must be specified in order to trigger a reception service analysis under the Order's 307(b) threshold inquiry. To the extent that the Order could be read to establish any such requirement, JSM respectfully suggests that the Commission use this proceeding to clarify that a 307(b) analysis will

¹ *In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, MM Docket No. 95-31, Report and Order (released April 21, 2000).

be conducted whenever mutually exclusive applications for reserved-band NCE radio licenses are filed.

1. ADMINISTRATIVE EFFICIENCY

JSM stands by its position that it would be inefficient and unfair to require a second adjudication of mutually exclusive NCE applications that have already been fully evaluated in a comparative hearing under the old rules. Real Life's assertion that "[t]he Commission long ago admitted that its previous noncommercial criteria were indefensible"² mischaracterizes the import of the Commission's Order. A number of commenters in the present proceeding, including JSM, expressed strong support for the comparative hearing process. As the State of Oregon noted, "the process itself was principled."³ Accordingly, the Commission concluded that there are substantive benefits associated with traditional hearings, but that those benefits were simply outweighed by the expenses associated with a full comparative hearing.⁴

Though the Commission has chosen to adopt a more streamlined decision-making process for future comparative proceedings, the Order in no way suggests that the Commission intended to invalidate the outcome of hearings conducted under the prior system. Nor does the Order suggest that the Commission expects the point system to produce substantively better

² *Opposition to Petition for Clarification and Reconsideration of Real Life Educational Foundation of Baton Rouge* at 1 (August 3, 2000) (hereinafter "Opposition"). Real Life's Opposition also misstates JSM's position regarding efficiency. JSM does not argue that efficiency is the sole reason for the Commission adoption of a new system, but merely that the new system represents a compromise between expediency at one extreme and substantive thoroughness at the other.

³ *Comments of the State of Oregon* at 4 (January 27, 1999).

outcomes than did the hearing system. Indeed, the Commission believes “that the new system will be faster and less expensive than the former system but will *continue* to foster the growth of public broadcasting as ‘an expression of diversity and excellence, and . . . a source of alternative telecommunications services for all citizens of the Nation.’”⁵ It would be contrary to the Order’s objective of enhancing the expediency of the comparative process to require readjudication where applicants have already undergone the rigors of a full administrative hearing.

2. FAIR DISTRIBUTION OF SERVICE

Real Life asserts in its Opposition that the 307(b) threshold analysis “is invoked only if two applicants propose to serve different communities.”⁶ JSM interprets the Order differently, as requiring a 307(b) comparison whenever the Commission is presented with mutually exclusive applications proposing to serve different communities of license *or* different reception service areas. To avoid future misunderstandings regarding the intent of the Order in this respect, JSM strongly urges the Commission to clarify that the specification of two separate communities of license is not a prerequisite to reception service analysis under 307(b).

The 307(b) threshold set forth in the Order creates a dispositive preference for applicants able to demonstrate one or more of the following: (1) that they would provide “white area” (first NCE reception service) coverage to significantly superior populations; (2) that they would provide “grey area” (second NCE reception service) coverage to significantly superior

⁴ Order at ¶ 10. The Commission observes that among the virtues of a comparative hearing are “the ability to make fine distinctions between candidates and the ability to expose potential abuse by questioning applicants in front of a judge.”

⁵ Order at ¶ 1 (citing 47 U.S.C. §396(a)(5)) (emphasis added).

⁶ Opposition at 3.

populations; or (3) that they would provide a first local NCE transmission service to their specified community. While the “two separate communities of license” rule asserted by Real Life makes perfect sense with respect to the third prong, which addresses transmission service, it makes no sense at all with respect to the first two prongs, which compare reception service.⁷

Unlike transmission service, reception service (that is, signal coverage) is not measurable in reference to community boundaries as such. As a functional matter, it can only be measured in reference to populations within a proposed station’s coverage contours.⁸ Therefore, the logically appropriate trigger for a reception service analysis under 307(b) is mutual exclusivity itself, regardless of whether the competing applicants have designated the same or different communities for transmission service purposes.⁹ To hold otherwise is not only arbitrary, irrational and rigidly formalistic, but contrary to the stated policy aim of 307(b)—maximizing the distribution of both transmission and reception service among United States populations.

⁷ *Bureau Broadcasting Co.*, 31 FCC 65, 72 (1961), defines transmission service as “the availability of a readily accessible station to provide an outlet for local self-expression” and reception service as “the availability of a listenable signal.”

⁸ The Commission’s Order, perhaps inadvertently, uses language referring to different “communities” in discussing reception service. However, the Commission’s practice has consistently been to measure reception service with regard to service areas rather than communities per se. See *Kent-Ravenna Broadcasting Co.*, FCC 61-1350, 22 Rad. Reg. 605, 611 (1961), holding that “[i]n determining equitable distribution of broadcast facilities, the Commission will look to *the relative needs of the respective proposed service areas for a reception service*, and will also look to the relative needs of each of the principal communities for a new transmission service” (emphasis added).

⁹ Although the Commission appears to hold in *Seattle Public Schools*, 4 FCC Rcd 625, 643 (1989), that such a “separate communities of license” rule exists, it in fact leaves the question open. The Commission ultimately rested its decision to deny applicant Jack Straw’s claim to a dispositive 307(b) reception service preference on alternate grounds, affirming the ALJ’s finding that Straw’s particular proposal was technically unacceptable. *Id.* at 643-44.

Real Life claims that the service areas of applications specifying the same community of license should not be compared, despite the possibility of a significant disparity in coverage within the respective contours.¹⁰ The absurdity of applying such a “separate communities of license” rule to reception service analysis under 307(b) is readily apparent when looking at the proceedings involving Real Life and JSM as an example. As noted elsewhere, JSM’s technical proposal has a measurable “grey area” service advantage over Real Life’s.¹¹ Although both applicants specified Baton Rouge, Louisiana as their proposed community of license, a number of other communities (for example, Denham Springs, Gardere and Brownfields) also fall within each party’s service contours. Thus, either party could conceivably have specified a community of license other than Baton Rouge without modifying its proposed service contours in any way. If one applicant had specified Denham Springs and the other applicant had specified Baton Rouge, for example, there would be no question under the Order that the threshold 307(b) inquiry would have to be conducted.

There is no logical or legal reason why the 307(b) analysis should be precluded merely because both applicants happen to specify the same community of license. The needs of vast populations and areas of the country would be arbitrarily ignored if this interpretation of the

¹⁰ Opposition at 3.

¹¹ See, e.g., *Real Life Educational Foundation of Baton Rouge*, FCC 89D-54 at 10 (1989); Opposition at 4. JSM takes this opportunity to note that the Opposition’s mathematical analysis of the coverage differences between the applicants is inaccurate. However, the purpose of this Reply is not to argue possible outcomes under a 307(b) threshold analysis—it is to urge the Commission to perform the 307(b) analysis whenever it compares mutually exclusive NCE radio applications.

Order were embraced.¹² Real Life's reading of the Order would thus divorce the 307(b) threshold inquiry from its underlying policy aims, rendering the inquiry meaningless. To avoid this outcome, the Commission should clarify that all mutually exclusive NCE radio applicants are subject to the 307(b) threshold inquiry.

For the reasons set forth above, JSM hereby urges the Commission to reject Real Life's Opposition to JSM's Petition for Clarification and Reconsideration.

Respectfully submitted,

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¹² The Commission in *Kent-Ravenna* affirms that “[t]he heart of 47 U.S.C. §307(b) is the mandate ‘to provide a fair, efficient, and equitable distribution of radio service’” throughout the United States. 22 Rad. Reg. at 610.

CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of August, 2000, served a true copy of the foregoing Opposition via U.S. mail, postage prepaid, upon:

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