



Federal Communications Commission
Washington, D.C. 20554

October 6, 2005

DA 05-2386
In Reply Refer to:
1800B3-ALV

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Maynard School Committee
c/o Donald G. Kennedy
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In Re: NEW (NCE FM), Lunenburg, MA
Facility ID No. 122297
BNPED-20000118ACZ
Application for NCE FM Construction Permit

NEW (NCE FM), Lexington, MA
Facility ID No. 122201
BNPED-20000118AAG
Application for NCE FM Construction Permit

NEW (NCE FM), Stow, MA
Facility ID No. 122279
BNPED-20000118ABW
Application for NCE FM Construction Permit

NCE Station WAVM(FM), Maynard, MA
Facility ID No. 40791
BPED-19990726MA
Application to Make Major Change

Group No. 990705

Dear Applicants:

We have before us Group 990705 – four mutually exclusive applications for noncommercial educational (“NCE”) FM stations serving different communities.¹ In such situations, the rules require the Commission to make a threshold determination as to whether grant of any of the applications would

¹ In this instance, three of the applications are for permits to construct new NCE FM stations at Lunenburg, Lexington, and Stow, Massachusetts, respectively, and the other is an application to make major changes to NCE Station WAVM(FM), Maynard, Massachusetts.

further the fair, efficient, and equitable distribution of radio service among communities.² For the reasons below, we determine that Living Proof, Inc. (“Living Proof”) is entitled to a decisive Section 307(b) preference.

An NCE FM applicant is eligible to receive a Section 307(b) preference if it would provide a first or second reserved channel NCE aural service (in the aggregate) to at least ten percent of the population, provided that this constitutes at least 2,000 people, within the proposed station’s 60 dBu contour.³ If more than one applicant in a mutually exclusive group qualifies for a preference, we compare first service population coverage totals.⁴ An applicant will receive a dispositive fair distribution preference by proposing to serve at least 5,000 more potential listeners than the next highest applicant’s first service total.⁵ If no applicant is entitled to a first service preference, we will consider combined first and second service population totals and apply the same 5,000 listener threshold.

In the present group, Living Proof would serve Lunenburg, Massachusetts, CSN International would serve Lexington, Massachusetts, the University of Massachusetts would serve Stow, Massachusetts, and NCE Station WAVM(FM), licensed to Maynard School Committee, serves Maynard, Massachusetts.⁶ Living Proof is the only applicant to claim that it would provide a new first or second NCE service to 10 percent of the population, and to at least 2,000 people, within its service area, and therefore, that it is eligible for a fair distribution preference.⁷ Based on Living Proof’s submissions and calculations, it appears that Living Proof qualifies for a preference. Accordingly, pursuant to Section 73.7004 of the Commission’s rules, we identify Living Proof as the tentative selectee. Group 990705 thus will not proceed to a point hearing.⁸

² See 47 U.S.C. § 307(b); 47 C.F.R. § 73.7002(a).

³ See 47 C.F.R. § 73.7002(b). With respect to population information, applicants were to use the 2000 Census data, if available by June 4, 2001. See “Supplements and Settlements to Pending Closed Groups of Noncommercial Educational Broadcast Applications Due by June 4, 2001,” *Public Notice*, 16 FCC Rcd 6893 (MB Mar. 22, 2001). Applicants were also to base their “fair distribution” analysis on the “snap shot” date of June 4, 2001, which is applicable unless the applicant subsequently makes engineering changes that would diminish its comparative position. *Id.* In this case, none of the applicants have made such engineering changes. In addition, each applicant timely supplemented its application with a Section 307(b) showing; each purports to be based on 2000 Census data and a “snap shot” date of June 4, 2001.

⁴ See 47 C.F.R. § 73.7002(b). See also “Deadline for NCE Settlements and Supplements Extended to July 19, 2001; Date for Calculating Comparative Qualifications Remains June 4, 2001,” *Public Notice*, 16 FCC Rcd 10892, 10893 (MB May 24, 2001).

⁵ *Id.*

⁶ Maynard School Committee proposes to make major modifications to existing station WAVM(FM). Accordingly, we consider only WAVM(FM)’s area of newly added service in our 307(b) analysis. See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 16 FCC Rcd 5074, 5094 (2001).

⁷ Living Proof’s 60 dBu contour encompasses 38,111 people. Living Proof’s claimed aggregated first and second service is 25,567 people.

⁸ See 47 C.F.R. § 73.7002(b). The Media Bureau has delegated authority to make 307(b) determinations in NCE cases. See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 15 FCC Rcd 7386 (2000), *partially reversed on other grounds*, *NPR v. FCC*, 254 F.3d 226 (DC Cir. 2001) (“*NCE Order*”). See also 47 C.F.R. § 0.283. In the *NCE Order*, the Commission concluded that “[i]n examining the fair distribution issues, we will use the general process set forth in the Section of our Competitive Bidding proceeding that addressed Section 307(b) considerations for AM stations.” See *NCE Order*, 15 FCC Rcd at 7397 (citing *Comparative Bidding for Commercial Broadcasting and Instructional Television Fixed Services*, 13 FCC Rcd 15920 (1998) (delegating authority to the staff to conduct Section 307(b) analyses with respect to AM applications prior to conducting auctions of competing applications)). In contrast, the *NCE Order* noted that the point system analysis conducted

Accordingly, it is ordered that the application of Living Proof, Inc. is accepted for filing. It is also ordered that Living Proof, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Lunenburg, Massachusetts. Petitions to deny the tentative selectee are due within thirty (30) days following the issuance of a subsequently issued public notice announcing the acceptance and tentative selection of this application.⁹ 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 will, by public notice, dismiss the other mutually exclusive applications and grant the application of Living Proof, Inc. (File No. BNPED-20000118ACZ).

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

when Section 307(b) is not determinative is considered a simplified "hearing" for purposes of 47 U.S.C. § 155(c)(1).
See NCE Order, 15 FCC Rcd at 7420.

⁹ *See* 47 C.F.R. § 73.7004. If any applicant previously raised issues against the tentative selectee, it must refile its objections within this thirty (30) day period.