



**Federal Communications Commission
Washington, D.C. 20554**

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In Reply Refer to:

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In re: **MX Group No. 248**
New NCE-FM, Park City, Utah
Oscar Aguero Ministry
Facility ID No. 173878
File No. BNPED-20071015AGK

Petitions to Deny

New NCE-FM, Evanston, Wyoming
University of Wyoming
Facility ID No. 173678
File No BNPED-20071017ADJ

Dear Applicant and Counsel:

We have before us: (1) the referenced application, filed by Oscar Aguero Ministry ("OAM"), for a new, noncommercial educational ("NCE") FM station at Park City, Utah ("OAM Application"); and (2) the referenced application, filed by the University of Wyoming ("UW"), for a new NCE FM station at Evanston, Wyoming ("UW Application"). We also have before us an Informal Objection to the OAM Application filed by Silver Fish Broadcasting, Inc. ("Silver Fish") on April 24, 2008 ("Silver Fish Objection"), as well as Petitions to Deny the OAM application filed by UW on July 29, 2008 ("UW Petition") and by Silver Fish on July 30, 2008 ("Silver Fish Petition"). Finally, we have before us a Response to a staff Letter of Inquiry filed by OAM on April 23, 2010 ("OAM Response"). For the reasons set forth below, we dismiss the OAM Application, accept the UW Application for filing, and dismiss the UW and Silver Fish Petitions, and the Silver Fish Objection, as moot.

Background. OAM, UW, Silver Fish, and Iglesia Cristiana Ebenezer (“ICE”) filed mutually exclusive applications for new NCE FM stations during the October, 2007 filing window. These applications were subsequently designated MX Group No. 248.¹ The staff tentatively selected the OAM application because it was the only one that would provide a first NCE service.² The OAM Application was also accepted for filing, which triggered a 30-day period for parties to file petitions to deny against the tentative selectee.³ The Silver Fish Objection and the timely filed UW and Silver Fish Petitions to Deny raise the same issues. They contend that the OAM Application should be denied because it will not provide the requisite coverage of its proposed community of license and because OAM did not have reasonable assurance of site availability to construct the proposed station. OAM did not respond to these Petitions.

On April 14, 2010, the staff sent OAM a *Letter of Inquiry* (“LOI”), requesting that OAM address the site assurance issue raised by the UW and Silver Fish Petitions.⁴ The LOI also asked OAM to comment on whether its proposal of a new 650-foot tower would have an environmental impact due to its location in a national forest. On April 23, 2010, OAM submitted its Response, stating that, in light of the UW and Silver Fish Petitions, OAM re-evaluated all the documentation available in this proceeding and believes that “. . . the proposed site will be unavailable to construct at any time in the foreseeable future.”⁵ As a result, OAM concludes that “. . . this proposal is no longer worth pursuing”⁶ Accordingly, we will dismiss the OAM application.

Discussion. In light of our dismissal of the OAM Application, UW is the only remaining applicant in MX Group No. 248 eligible for a dispositive “fair distribution” preference.⁷ We have studied the UW Application and have determined that it is acceptable for filing. We, therefore, will accept the UW Application for filing and tentatively conclude that the public interest would be served by grant of the UW Application for a construction permit for a new NCE FM station at Evanston, Wyoming. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee’s application, we intend, by public notice, to grant the UW Application with appropriate conditions.

¹ See *Media Bureau Identifies Groups of Mutually Exclusive Applications*, Public Notice, 23 FCC Rcd 3914 (MB 2008).

² See *Threshold Fair Distribution Analysis of 32 Groups of Mutually Exclusive Applications for Permit to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 23 FCC Rcd 10213, 10222 ¶ 35 (MB 2008) (“*Fair Distribution Order*”). Specifically, OAM’s “fair distribution” preference is based on the fact that its proposed facilities would provide a first NCE service to 12,771 people. See also 47 C.F.R. 73.2002(b).

³ See 47 C.F.R. § 73.7004. See also *Fair Distribution Order*, 23 FCC Rcd at 10230 ¶ 72. The *Fair Distribution Order* further noted that because the Silver Fish Objection did not raise fair distribution claims, it would be held in abeyance for consideration in conjunction with any petitions or objections filed by the petition to deny deadline. See *id.*, 23 FCC Rcd at 10222 ¶ 36.

⁴ *Letter to Oscar Aguero, President, Oscar Aguero Ministry*, reference 1800B3-AJR (MB Apr. 14, 2010).

⁵ OAM Response at 1.

⁶ *Id.* at 2.

⁷ See *Fair Distribution Order*, 23 FCC Rcd at 10222 ¶ 35 (MB 2008). Specifically, UW’s 60 dBu contour would encompass 14,844 people and would provide a first or second NCE service to all 14,844 people within its proposed 60 dBu contour. See *id.*, 23 FCC Rcd at 10222, ¶ 35 and n.43.

Conclusions/Actions: Accordingly, IT IS ORDERED, That the tentative selection of the application of Oscar Aguero Ministry (File No. BNPED-20071015AGK) for a permit to construct a new NCE FM station IS REVERSED and the application IS DISMISSED.

IT IS FURTHER ORDERED, that the Petitions to Deny filed by the University of Wyoming and Silver Fish Broadcasting, Inc. on July 2, 2008, and July 30, 2008, respectively, and the Informal Objection filed by Silver Fish Broadcasting April 24, 2008, ARE DISMISSED AS MOOT.

IT IS FURTHER ORDERED, that the application filed by the University of Wyoming (File No. BNPED-20071017ADJ) is ACCEPTED FOR FILING and TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station at Evanston, Wyoming. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend TO GRANT the referenced UW application CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Rules,⁸ which sets forth a four-year period of on-air operations substantially as proposed.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Dan J. Alpert, Esq.

⁸ 47 C.F.R. § 73.7002(c).