



Federal Communications Commission  
Washington, D.C. 20554

April 20, 2007

In Reply Refer To:  
1800B3-ALV

Faith Broadcasting, Inc.  
c/o Jeffrey D. Southmayd, Esq.  
Southmayd & Miller  
1220 19<sup>th</sup> Street, N.W.  
Suite 400  
Washington, D.C. 20036

American Family Association  
c/o Donald E. Wildmon  
P.O. Drawer 3206  
Tupelo, MS 38803

Re: Faith Broadcasting, Inc.  
WSTF(FM), Andalusia, AL  
BPED-19981202MF  
Facility ID No. 43641

American Family Association  
WAXU(FM), Troy, AL  
BMPED-19980619MA  
Facility ID No. 85064

**Group No. 980604**

Dear Applicants:

We have before us Group 980604 – two mutually exclusive applications to make major changes to noncommercial educational (“NCE”) FM stations serving different communities. In this situation, the rules require the Commission to make a threshold determination as to whether grant of either of the applications would further the fair, efficient, and equitable distribution of radio service among communities.<sup>1</sup> For the reasons stated below, we determine that the application of Faith Broadcasting, Inc. (“Faith”) 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 predicted 60 dBu contour.<sup>2</sup> If more than one applicant in a mutually exclusive group qualifies for a preference, we compare

<sup>1</sup> See 47 U.S.C. § 307(b); 47 C.F.R. § 73.7002(a).

<sup>2</sup> See 47 C.F.R. § 73.7002(b). With respect to population data, the Media Bureau directed applicants to use 2000 Census data, if available by June 4, 2001. See *Supplements and Settlements to Pending Closed Groups of* (footnote continued...)

first service population coverage totals.<sup>3</sup> 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, assuming that the applicant proposes first service to at least ten percent of the population.<sup>4</sup> If no applicant is entitled to a first service preference, we consider combined first and second service population totals and apply the same 5,000 listener, and ten percent of the population thresholds.

In the present group, NCE Station WSTF(FM), licensed to Faith, serves Andalusia, Alabama, and NCE Station WAXU(FM), licensed to American Family Association ("AFA"), serves Troy, Alabama.<sup>5</sup> Faith 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.<sup>6</sup> Based on Faith's submissions and calculations, it appears that Faith qualifies for a preference. Accordingly, pursuant to Section 73.7004 of the Commission's Rules (the "Rules"), we identify Faith as the tentative selectee. Group 980604 thus will not proceed to a point hearing.<sup>7</sup>

The Commission recently waived Section 73.3573 of the Rules to prevent dismissal of several tentative selectees that had been chosen pursuant to the NCE point system but that had experienced gradual, routine changes in over 50 percent of their governing boards over time.<sup>8</sup> In so doing, the

---

*Noncommercial Educational Broadcast Applications Due by June 4, 2001*, Public Notice, 16 FCC Rcd 6893 (MB Mar. 22, 2001). The "fair distribution" analysis for applications filed under former licensing procedures is based on technical proposals pending on the "snap shot" date of June 4, 2001. Amendments after this date that diminish the applicant's comparative position are also considered. In this case, neither of the applicants has 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 an application "snap shot" date of June 4, 2001.

<sup>3</sup> 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).

<sup>4</sup> *Id.*

<sup>5</sup> Faith proposes to make major modifications to existing station WSTF(FM), and AFA proposes to make major modifications to existing station WAXU (FM). Accordingly, we consider only each station's area of newly added service in our 307(b) analysis. See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Memorandum Opinion and Order, 16 FCC Rcd 5074, 5094 (2001).

<sup>6</sup> Faith's 60 dBu contour encompasses 12,024 people. Faith's claimed aggregated first and second service is 6,258 people.

<sup>7</sup> 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*, Report and Order, 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*, First Report and Order, 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 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.

<sup>8</sup> See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 07-40, slip op. at paras. 59-60 (rel. March 27, 2007) ("*NCE Omnibus Order*"); 47 C.F.R. §§ 73.3573(a)(1), (b)(2), and (b)(3).

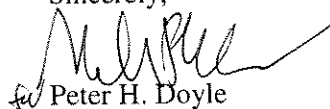
Commission directed the staff to grant waivers for similarly situated applicants selected pursuant to a fair distribution analysis. We find that a waiver is appropriate for Faith, the tentative selectee in the present group.<sup>9</sup>

Accordingly, IT IS ORDERED, That the application of Faith Broadcasting, Inc. is accepted for filing. It is also ordered that Faith Broadcasting, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for NCE FM Station WSTF(FM) in Andalusia, Alabama.

IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in the tentative selectee.

Petitions to deny the application of the tentative selectee are due within thirty (30) days of public notice announcing the tentative selection of the Faith application.<sup>10</sup> 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 mutually exclusive application of American Family Association (File No. BNPED-19980619MA) and grant the application of Faith Broadcasting, Inc. (File No. BNPED-19981202MF).

Sincerely,



Peter H. Doyle  
Chief, Audio Division  
Media Bureau

---

<sup>9</sup> Faith filed its application in 1998. Since that time, a majority of Faith's officers and board members has changed gradually. See Amendment to File No. BNPED-19981202MF (January 21, 2005). The change appears to have occurred naturally as the organization evolved and grew, not as an outgrowth of any party's desire to gain control over a pending NCE new station application. See *NCE Omnibus Order*, slip op. at para. 60.

<sup>10</sup> 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.