



Federal Communications Commission
Washington, D.C. 20554

April 1, 2022

In Reply Refer to:
1800B3-ATS

Mr. Tom Michael
Idaho State Board of Education
Boise State University
1910 University Drive
Boise, ID 83725
(sent by electronic mail to: tommichael@boisestate.edu)

Mr. Steven L. White
Triangle Access Broadcasting, Inc.
7813 Highlandview Circle
Raleigh, NC 27613-4109
(sent by electronic mail to: steven@triacces.org)

In re: **Idaho State Board of Education**
New NCE, Challis, Idaho
Facility ID No. 762199
File No. 0000166763

New NCE, Challis, Idaho
Facility ID No. 762200
File No. 0000166765

Informal Objection

Dear Mr. Michael and Mr. White:

We have before us two applications filed by Idaho State Board of Education (ISBE), for construction permits for new noncommercial education (NCE) FM stations at Challis, Idaho (collectively, Applications).¹ We also have before us the Informal Objection to the Second Application filed by Triangle Access Broadcasting, Inc. (Triangle).² For the reasons set forth below, we deny the Objection and grant both Applications.

Background. ISBE filed the Applications during the 2021 NCE Filing Window, and both identified Challis, Idaho, as the community of license. On December 10, 2021, Triangle filed the Objection seeking dismissal of the Second Challis Application. Triangle argues that the latter-filed application should be dismissed on the basis of section 73.3520 of the Commission's rules (Rules) because both the First Challis Application and the Second Challis Application will serve the same

¹ File Nos. 0000166763 (First Challis Application) and 0000166765 (Second Challis Application).

² Pleading No. 0000177190 (filed Dec. 10, 2021) (Objection). Triangle also electronically filed the Objection against the First Challis Application, even though it does not seek dismissal of that application. Pleading No. 0000177189 (filed Dec. 10, 2021).

community.³ Triangle also argues that “[m]ultiple applications create advantages for applicants who have had proposals determined to be mutually exclusive with other applications who are blocked from submitting similar alternate proposals” and “interfere with the Commission’s goals of competition and diversity.”⁴ ISBE did not file an opposition to Triangle’s objection.

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),⁵ petitions to deny and informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.⁶

The Commission has held that the Multiple Application Rule is not applicable to applications for new NCE stations.⁷ In *Open Media*, the Commission unambiguously stated that “[section] 73.3520 is premised on there being a limit to the number of stations which may be owned by any one licensee in the same community. However, since the multiple ownership rules do not apply to NCE–FM operations, neither [applicant] is precluded from owning and operating more than one NCE–FM facility in the market. Thus, it follows that each [applicant] may have more than one application pending at the same time for a given market.”⁸ Accordingly, ISBE’s multiple applications for Challis do not violate the Multiple Application Rule.

We also reject Triangle’s argument that enforcement of the Multiple Application Rule would be beneficial to mutually exclusive applicants and further the Commission’s goals of competition and diversity. In this situation, both Applications are singletons and not prejudicial to other applicants. Additionally, the Multiple Application Rule reflects the Commission’s intent to expedite its processing procedures “by avoiding the disruption of having two inconsistent applications contemporaneously being studied by the staff when only one can be granted.”⁹ The Commission has never held, and Triangle cites to no authority, that the goal of this rule was to promote competition and diversity. The Commission did not address the Multiple Application Rule in the rulemaking procedures adopting the current NCE comparative point system.¹⁰ Moreover, the Commission has implemented other policies to achieve these

³ Objection at 1-2 (citing 47 CFR § 73.3520 (“Where there is one application for new or additional facilities pending, no other application for new or additional facilities for a station of the same class to serve the same community may be filed by the same applicant, or successor or assignee, or on behalf of, or for the benefit of the original parties in interest. Multiple applications may not be filed simultaneously.”) (Multiple Application Rule)).

⁴ Objection at 2.

⁵ 47 U.S.C. § 309(d).

⁶ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff’d sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

⁷ *Open Media Corporation*, Memorandum Opinion and Order, 8 FCC Rcd 4070, 4073, para. 16 (1993).

⁸ *Id.*

⁹ *WGBH Education Foundation*, Letter Order, DA 22-138 at 5 (MB 2022) (citing *Radio Representatives, Inc.*, Hearing Designation Order, 5 FCC Rcd 1894, 1896, para. 16 (1990)).

¹⁰ See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Notice of Proposed Rulemaking, 10 FCC Rcd 2877 (1995), Further Notice of Proposed Rulemaking, 13 FCC Rcd 21167 (1998), Report and Order, 15 FCC Rcd 7386 (2000), *vacated in part on other grounds sub nom., National Public Radio v. FCC*, 254 F.3d 226 (D.C. Cir. 2001), *clarified*, Memorandum Opinion and Order, 16 FCC Rcd 5074 (2001) (*NCE MO&O*), *Erratum*, 16 FCC Rcd 10549, *recon. denied*, Memorandum Opinion and Second Order on

important goals, such as the adoption of a ten application cap for the 2007 and 2021 NCE filing windows.¹¹ Accordingly, we deny the Objection and grant the Applications.

Conclusion/Action. Accordingly, IT IS ORDERED that the Informal Objection filed on December 10, 2021, by Triangle Access Broadcasting, Inc., IS DENIED.

IT IS FURTHER ORDERED that the applications of Idaho State Board of Education for construction permits for new noncommercial educational FM stations at Challis, Idaho (File Nos. 0000166763 and 0000166765), ARE GRANTED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):

Ernest T. Sanchez, Esq. (ernestsanchez2348@gmail.com)
(Contact Representative for Idaho State Board of Education)

Reconsideration, 17 FCC Rcd 13132 (2002), *aff'd sub nom., American Family Ass'n v. FCC*, 365 F.3d 1156 (D.C. Cir. 2004), *cert. denied*, 543 U.S. 1000 (2004); *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, Notice of Proposed Rulemaking, 34 FCC Rcd 851 (2019), Report and Order, 34 FCC Rcd 12519 (2019).

¹¹ *FCC Adopts Limit for NCE FM New Application in October 12-October 19, 2007 Window*, Public Notice, 22 FCC Rcd 18699 (2007); *FCC Adopts 10-Application Limit for NCE FM New Stations in Upcoming 2021 Filing Window*, MB Docket No. 21-343, Public Notice, 36 FCC Rcd 7754 (2021).