



Federal Communications Commission
Washington, D.C. 20554

April 1, 2022

In Reply Refer to:
1800B3-ATS

Mr. Kristopher Michael
Cheyenne Broadcasting Foundation, Inc.
7311 Christensen Road
Cheyenne, WY 82009
(sent by electronic mail to: krisbmichael@hotmail.com)

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

In re: **Cheyenne Broadcasting Foundation,
Inc.**
New NCE, Lucerne, Wyoming
Facility ID No. 767294
File No. 0000167324

Informal Objection

Dear Mr. Capozzi and Mr. White:

We have before us the application filed by Cheyenne Broadcasting Foundation, Inc. (CBF), for a construction permit for a new noncommercial education (NCE) FM station in Lucerne, Wyoming.¹ We also have before us the Informal Objection to the Application filed by Triangle Access Broadcasting, Inc. (Triangle)² and the Opposition to the Objection filed by CBF.³ For the reasons set forth below, we deny the Objection and grant the Lucerne Application.

Background. CBF filed the Lucerne Application during the 2021 NCE Filing Window, as well as a separate application for a construction permit for a new NCE FM station proposing to serve Winchester, Wyoming.⁴ On December 2, 2021, CBF amended the Lucerne Application to identify a new tower site, which is the same site as the one identified in the Winchester Application. The Bureau granted the unopposed Winchester Application on January 4, 2022.

In the Objection, Triangle argues that the Lucerne Application should be dismissed on the basis of section 73.3530 of the Commission's rules (Rules) because both that application and the Winchester Application will serve the same community.⁵ Triangle argues that, although the Applications identify

¹ File No. 0000167324 (Lucerne Application).

² Pleading No. 0000179381 (filed Jan. 9, 2022) (Objection).

³ Pleading No. 0000185257 (filed Feb. 23, 2022) (Opposition).

⁴ File No. 0000167742 (Winchester Application).

⁵ 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

different communities of license, they are still prohibited under the Multiple Application Rule because they will serve the same area.⁶ Triangle also argues that “a prohibition of multiple applications promotes fairness to other applicants seeking the establishment of broadcast services in the same or other communities, and its assists with the just administration of Commission processes.”⁷

In the Opposition, CBF argues that its two applications do not violate the Multiple Application Rule because: 1) the Winchester Application and the Lucerne Application propose to serve two different communities; 2) the Winchester Application proposes a C2 station and the Lucerne Application proposes a C3 station, and are therefore not the same class of service; 3) the Winchester Application “will not place a 60 dBu contour” over the Lucerne Application, despite being collocated on the same tower; and 4) there are three additional channels available for future NCE services in the area served by the two applications.⁸ Triangle did not file a Reply to the Opposition.

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),⁹ 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.¹⁰

The Commission has held that the Multiple Application Rule is not applicable to applications for new NCE stations.¹¹ 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.”¹² We also find *Johnson* inapposite here because it did not involve applicants for NCE stations, and precedes the Commission’s holding in *Open Media* that the Multiple Application Rule does not apply to NCE applicants. Accordingly, CBF’s multiple applications for Winchester and Lucerne do not violate the Multiple Application Rule.

We also reject Triangle’s argument that enforcement of the Multiple Application Rule would be beneficial to other applicants. In this situation, the Winchester Application and the Lucerne Application 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

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)).

⁶ Objection at 1-2 (citing *Johnson Broadcasting Co.*, Memorandum Opinion and Order, 15 FCC 939, 942, paras. 6-8 (1951) (*Johnson*)).

⁷ Objection at 2 (citing *Johnson*, 15 FCC at 942, para. 8).

⁸ Opposition at 3.

⁹ 47 U.S.C. § 309(d).

¹⁰ 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).

¹¹ *Open Media Corporation*, Memorandum Opinion and Order, 8 FCC Rcd 4070, 4073, para. 16 (1993).

¹² *Id.*

inconsistent applications contemporaneously being studied by the staff when only one can be granted.”¹³ The Commission has never held, and Triangle cites to no authority, that the goal of this rule was to benefit competing NCE applicants. The Commission did not address the Multiple Application Rule in the rulemaking procedures adopting the current NCE comparative point system.¹⁴ Moreover, the Commission has implemented other policies to ensure fairness for all NCE applicants, such as the adoption of a ten application cap for the 2007 and 2021 NCE filing windows.¹⁵ Accordingly, we deny the Objection and grant the Lucerne Application.

Conclusion/Action. Accordingly, IT IS ORDERED that the Informal Objection filed on January 9, 2022 by Triangle Access Broadcasting, Inc., IS DENIED.

IT IS FURTHER ORDERED that the application of Cheyenne Broadcasting Foundation, Inc., for a construction permit for a new noncommercial educational FM station at Lucerne, Wyoming (File No. 0000167324), IS GRANTED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):

Aubrey Fitch III, Esq. (<mailto:awf@gg-law.com>)
(Contact Representative for Cheyenne Broadcasting Foundation, Inc.)

¹³ *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)).

¹⁴ 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 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).

¹⁵ *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).