



Federal Communications Commission
Washington, D.C. 20554

August 16, 2022

In Reply Refer to:
1800B3-ATS

Mr. Steven Landsteiner
Fairmont Area Catholic radio
1117 170th Ave.
Fairmont, MN 56031
(sent by electronic mail to: steland@frontier.com)

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

In re: **Fairmont Area Catholic Radio**
New NCE, Fairmont, MN
Facility ID No. 768294
Application File No. 0000167072

Informal Objection

Dear Mr. Landsteiner and Mr. White:

We have before us the application filed by Fairmont Area Catholic Radio (FACR), for a construction permit for a new noncommercial education (NCE) FM station in Fairmont, Minnesota.¹ We also have before us the Informal Objection to the Second Fairmont Application filed by Triangle Access Broadcasting, Inc. (Triangle).² For the reasons set forth below, we deny the Objection and grant the Second Fairmont Application.

Background. FACR filed the Second Fairmont Application during the 2021 NCE Filing Window,³ as well as a separate application for a construction permit for a new NCE FM station also proposing to serve Fairmont, Minnesota.⁴ That application was identified as part of NCE MX Group 78,⁵

¹ Application File No. 0000167072 (Second Fairmont Application).

² Pleading File No. 0000176813 (filed Dec. 6, 2021) (Objection).

³ *Media Bureau Announces NCE FM New Station Application Filing Window Open from November 2, 2021 to November 9, 2021*, Public Notice, 36 FCC Rcd 7449 (MB 2021).

⁴ File No. 0000167071 (First Fairmont Application).

⁵ *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Education Stations; Opens Window to Accept Settlements and Technical Amendments*, MB Docket No. 20-343, Public Notice, DA 21-1476 (MB Nov. 29, 2021).

and subsequently identified as the tentative selectee of that group.⁶ The Bureau granted the unopposed First Fairmont Application on May 18, 2022.

In the Objection, Triangle argues that the Second Fairmont Application should be dismissed on the basis of section 73.3520 of the Commission's rules (Rules) because both that application and the First Fairmont Application will serve the same community.⁷ 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."⁸

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 Accordingly, FACR's multiple applications for Fairmont 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 Second Fairmont Application is a singleton 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."¹³ The Commission has never held, and Triangle cites to no authority, that the goal of this rule was to benefit

⁶ *Threshold Fair Distribution Analysis of 16 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-356 at 6, para. 18 (MB Apr. 4, 2022).

⁷ 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)).

⁸ Objection at 2.

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.*

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)).

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 Second Fairmont Application.

Conclusion/Action. Accordingly, **IT IS ORDERED** that the Informal Objection filed on December 6, 2021, by Triangle Access Broadcasting, Inc., **IS DENIED**.

IT IS FURTHER ORDERED that the application of Fairmont Area Catholic Radio for a construction permit for a new noncommercial educational FM station at Fairmont, Minnesota (Application File No. 0000167072), **IS GRANTED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

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).