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In re: **MyBridge, DBA as MyBridge Radio**
New NCE FM, Norfolk, NE
Facility ID No. 763074
Application File No. 0000166021

New NCE FM, Schuyler, NE
Facility ID No. 763352
Application File No. 00001666029

Informal Objection

Dear Applicant and Objector:

We have before us two applications filed by MyBridge, DBA as MyBridge Radio (MyBridge) for construction permits for new noncommercial educational (NCE) FM stations at Norfolk, Nebraska¹ and Schuyler, Nebraska² (collectively, Applications). We also have before us the Informal Objection (Objection) filed by Triangle Access Broadcasting, Inc. (Triangle), seeking dismissal of the Schuyler Application.³ For the reasons set forth below, we deny the Objection and grant the Applications.

Background. MyBridge filed the Applications during the 2021 NCE FM Filing Window.⁴ The Media Bureau (Bureau) determined that the Applications were mutually exclusive and identified them as

¹ Application File No. 0000166021 (Norfolk Application).

² Application File No. 0000166029 (Schuyler Application).

³ Pleading File Nos. 0000179723 and 0000179724 (filed Jan. 12, 2022) (Objection). MyBridge did not file an opposition to the Objection.

⁴ *Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB 2021).

part of MX Group 139.⁵ On December 14, 2021, MyBridge filed a minor technical amendment to the Norfolk Application to remove it from MX Group 139.⁶

On January 12, 2022, Triangle filed its Objection, claiming that the Applications are inconsistent applications because both cannot be granted under section 73.509 of the Commission rules (Rules).⁷ Accordingly, Triangle argues that the Bureau should have dismissed the latter-filed Schuyler Application, “thus eliminating the burden of processing an inconsistent application and creating delays in the processing of other valid applications.”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 adopted the Inconsistent Applications Rule during an era when all mutually exclusive broadcast applications were resolved in comparative hearings. The rule prohibits the filing of inconsistent or conflicting applications by, on behalf of, or for the benefit of, the same applicant. The rule was promulgated in the comparative hearing context because of “concern that processing and hearing applications which cannot all be granted because of the limits of the multiple ownership rules may waste the Commission’s resources, unfairly prejudice other applicants, and delay service to the public.”¹¹ The primary purpose of the Inconsistent Applications Rule was to expedite application processing procedures by avoiding “the disruption of having two inconsistent applications contemporaneously being studied by the staff.”¹²

In *Royce*, the Commission held that the Inconsistent Applications Rule was not applicable in the competitive bidding context because the procedures adopted for processing mutually exclusive auction

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*, Public Notice, 36 FCC Rcd 16542 (MB 2021) (*MX Groups Public Notice*).

⁶ Norfolk Application, Amendment at Attach. Reasons for Amendment (filed Dec. 14, 2021).

⁷ Objection at 1-2 (citing 47 CFR § 73.3518 (Inconsistent Applications Rule); 47 CFR § 73.509 (prohibited overlap for applications for new NCE FM stations). Triangle notes that the Applications are mutually exclusive because they have overlapping contours. See Objection at 2.

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 See *Royce International Broadcasting, Co., et. al.*, Memorandum Opinion and Order, 24 FCC Rcd 5880, 5891-92, para. 24 (2009) (*Royce*) (citing *William H. Hernstadt*, Memorandum Opinion and Order, 56 RR 2d 948, 949 (1984); *Valley Broadcasting Co.*, Memorandum Opinion and Order, 58 RR 2d 945 (1985)).

¹² *Royce*, 24 FCC Rcd at 5892, para 24 (citing *KKAP Broadcasting Company*, Decision, 38 RR 2d 752, 753 (1976); *Big Wyoming Broadcasting Corp.*, Memorandum Opinion and Order, 63 RR 2d 981 (1987); *Atlantic Radio Communications, Inc.*, Hearing Designation Order, 6 FCC Rcd 4716 (1991); *Jersey Shore Broadcasting Corp. v. FCC*, 37 F.3d 1531, 1537 (D.C. Cir. 1994) (“[t]he inconsistent application rule exists primarily to protect Commission resources and processes.”)).

applications rendered the rule irrelevant.¹³ We find that the same rationale that the Commission applied in *Royce* renders the Inconsistent Applications Rule unnecessary under our current procedures for processing mutually exclusive new NCE FM applications. Specifically, as an alternative to the Inconsistent Applications Rule, the current NCE FM comparative process includes multiple safeguards to protect Commission time and resources and enable efficient application processing.¹⁴ These include a discrete filing window, limits on the number of applications any applicant can file,¹⁵ procedures for the efficient resolution of mutually exclusivity through settlements and technical amendments,¹⁶ and a detailed system for selecting a tentative selectee when conflict resolution is not achieved through settlement.¹⁷

Moreover, when NCE FM applications are classified as mutually exclusive, the Bureau does not process and review each application for acceptability and grantability. Rather, the Bureau only reviews, accepts for filing, and processes the one application identified,¹⁸ after the comparative analysis, as the tentative selectee of the MX group.¹⁹ Furthermore, we note that, before the comparative review process, we encourage mutually exclusive applicants to enter into settlements or file technical amendments to resolve conflicts and expedite the grant of applications filed in the window.²⁰ If an applicant amends a mutually exclusive application to become a singleton, the Bureau will, at that point only, study and process the application. The Inconsistent Applications Rule conflicts with these unique elements of the NCE FM comparative review process and, therefore, should not be applied to applications in this context.

¹³ *Royce*, 24 FCC Rcd at 5892, para. 26.

¹⁴ See, e.g., *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window; Limited Application Filing Freeze to Commence on October 5, 2021*, Public Notice, 36 FCC Rcd 11458 (MB 2021) (*Procedures Public Notice*).

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).

¹⁶ See, e.g., *MX Groups Public Notice*, *supra* note 5.

¹⁷ 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), 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).

¹⁸ See *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, Order on Reconsideration, 35 FCC Rcd 10180 (2020) (reaffirming the Commission's long standing one-grant policy). The one-grant policy provides that only one application should be granted out of each mutually exclusive group, while providing the remaining competing applicants the opportunity to file again in the next filing window.

¹⁹ See *MX Groups Public Notice*, 36 FCC Rcd at 16543. In contrast, the Bureau staff will review each singleton application for technical and legal acceptability. See *Media Bureau Dismisses Defective Singleton Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational FM Stations*, Public Notice, 36 FCC Rcd 16718 (MB 2021).

²⁰ See *MX Groups Public Notice*, *supra* note 5.

The Commission has held that other rules, such as section 73.3520,²¹ are irrelevant in the NCE FM context. Additionally, we note the staff is unaware of any instance where we have applied the Inconsistent Applications Rule to the processing of mutually exclusive NCE FM applications under the current comparative system, and Triangle cites to no instance of an NCE FM application dismissed under this rule.²²

In the alternative, if the Inconsistent Applications Rule is applicable to mutually exclusive applications for new NCE FM stations, we find good cause to grant a *sua sponte* waiver of the rule to promote a more functional comparative system for new NCE FM applications. The Commission's rules may be waived for good cause shown.²³ Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.²⁴ We find such circumstances are present here. Applicants were never advised in either the *Procedures Public Notice* or the Instructions to Schedule 2100, FCC Form 340 that the Inconsistent Applications Rule would be enforced.²⁵ MyBridge's filing of its Norfolk Application and Schuyler Application does not frustrate the policy of administrative effectiveness, promulgated by section 73.3518. Here, the Bureau staff did not review the Applications for technical and legal acceptability until each became a singleton as a result of the December 14, 2021, amendment. The Bureau, therefore, never expended time or resources reviewing an application that was not grantable. Additionally, the public interest would be frustrated by dismissing applications, that the Bureau never warned were subject to dismissal, and which the Bureau staff can ultimately grant. Accordingly, for these reasons, we waive the Inconsistent Applications Rule to the extent necessary, deny the Objection, and grant the Norfolk Application and the Schuyler Application.

Conclusion/Action. Accordingly, **IT IS ORDERED** that the Informal Objection filed on January 12, 2022 (Pleading Nos. 0000179723 and 0000179724) by Triangle Access Broadcasting, Inc. **IS DENIED.**

²¹ See *Open Media Corporation*, Memorandum Opinion and Order, 8 FCC Rcd 4070, 4073, para. 16 (1993) (holding that section 73.3520 of the rules does not apply to NCE stations because the rule is a multiple ownership rule and therefore inapplicable in the NCE context).

²² Conversely, we note that the Inconsistent Applications Rule is applicable in the LPFM context, where applicants are subject to stringent ownership limits and generally only permitted to file one application in a window. See 47 CFR § 73.860. During previous LPFM filing windows, we have explicitly warned applicants that the Inconsistent Applications Rule would be enforced. See, e.g., *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15 – October 29, 2013 Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854, 8857 (MB 2013) (warning that applicants that file a second application will face dismissal under section 73.3518); see also 47 CFR § 73.801 (applying the Inconsistent Applications Rule to LPFM stations). In contrast, as noted above, during the 2021 NCE FM filing window, applicants could file up to ten applications, and the Bureau notified applicants that it would only dismiss any latter-filed applications which exceeded this limit. *Supra* note 15.

²³ 47 CFR § 1.3.

²⁴ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)).

²⁵ Compare *supra* note 22.

IT IS FURTHER ORDERED that the applications of MyBridge, DBA as MyBridge Radio for construction permits for new noncommercial educational FM stations at Norfolk, Nebraska (Application File No. 0000166021) and Schuyler, Nebraska (Application File No. 0000166029) **ARE GRANTED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau