



Federal Communications Commission
Washington, D.C. 20554

November 10, 2010

In Reply Refer to:
1800B3-BSH

Robert F. Kelley, Jr., Director
Marianas Educational Media Services, Inc.
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Tamuning, GU 96913

Hurao, Inc.
c/o Donald Martin, Esq.
Box 8433
Falls Church, VA 22041

In re: **NCE MX Group 70**
New NCE (FM), Agana, Guam
Facility ID No. 174709
File No. BNPED-20071022BTB

Informal Objection

Dear Mr. Kelley and Counsel:

We have before us: (1) the referenced application filed by Hurao, Inc. ("Hurao") for a construction permit for a new noncommercial educational ("NCE") FM station at Agana, Guam ("Hurao Application"); and (2) an Informal Objection to the Hurao Application (the "Objection") filed on March 22, 2010, by Marianas Educational Media Services, Inc. ("MEMS"), applicant for a construction permit for a new NCE FM station at Agana, Guam.¹ The Hurao and MEMS applications, which were mutually exclusive, were designated as NCE MX Group 70 in the Commission's February 16, 2010, *Comparative Consideration Order*,² with the Hurao Application chosen as the tentative selectee therein. For the reasons set forth below, we deny the Objection and grant the Hurao Application.

Background. In the *Comparative Consideration Order*, the Commission applied NCE comparative selection criteria³ to 59 groups of mutually exclusive NCE FM applications and tentatively selected one winner in each group. NCE MX Group 70 consisted of the Hurao and MEMS applications. Each applicant proposes to serve the same community in Guam, and therefore the Commission compared the applicants under the NCE point system. The *Comparative Consideration Order* noted that MEMS claimed "that it is entitled to three points as an established local applicant and that it has submitted

¹ File No. BNPED-20071019AFM.

² See *Comparative Consideration of 59 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window*, Memorandum Opinion and Order, 25 FCC Rcd 1681 (2010) ("*Comparative Consideration Order*").

³ See 47 C.F.R. §§ 73.7000 – 05.

supporting documentation to the Commission.”⁴ The *Comparative Consideration Order* noted, however, that “we cannot locate any such supporting documentation and, therefore, believe that the certification is erroneous.”⁵ Therefore, MEMS was not awarded any points as an established local applicant. Hurao asserted that it was entitled to two points for diversity of ownership. The Commission found, however, that Hurao did not provide proper supporting documentation. Therefore, Hurao was not awarded any points for diversity of ownership. The *Comparative Consideration Order* found that neither applicant was entitled to any other total points, and so it proceeded to a tie-breaker analysis.

The first tie-breaker issue that the Commission considered was the number of radio station authorizations attributable to each applicant. Noting that the “applicant with the fewest authorizations prevails,” the *Comparative Consideration Order* found that MEMS has an attributable interest in two radio authorizations and that Hurao does not have an attributable interest in any radio authorization.⁶ Accordingly, based on the first tie-breaker, Hurao prevailed and was named the tentative selectee in NCE MX Group 70. Therefore, the Commission accepted the Hurao Application for filing and announced a 30-day period for filing petitions to deny that application.

Discussion. In its Objection to the tentative selection of the Hurao Application, MEMS states that it “has no comments regarding Hurao as an applicant or its application.”⁷ MEMS argues that it “does believe however that the Commission was in error in not awarding MEMS three points as an established local applicant.”⁸ The Objection asserts that the supporting documentation verifying MEMS’ claim that it is an “established local applicant” is contained in an application for a new LPFM station that MEMS had previously submitted in 2001 (“2001 LPFM Application”), and that MEMS had cross-referenced this 2001 LPFM Application in the instant FCC Form 340 application for the new NCE FM station at Agana.⁹

The staff has reviewed the 2001 LPFM Application that MEMS references. In response to Section II, Question 2.b of FCC Form 318, Application for Construction Permit for a Low Power FM Broadcast Station, the 2001 LPFM Application provides, as explanatory Exhibit 1, information demonstrating MEMS’ eligibility for an LPFM station authorization under Section 73.503 of the Commission’s Rules (“Rules”).¹⁰ Specifically, MEMS had demonstrated that it is a nonprofit organization with an educational purpose, and that use of the station’s programming will further that educational purpose. While responsive to the LPFM eligibility requirements, the 2001 LPFM Application does not, however, provide the required information to demonstrate that MEMS is an “established local applicant” under the NCE point system criteria, codified at Section 73.7003(b)(1) of the Rules.¹¹ The precise supporting documentation required for those applicants claiming points as an “established local

⁴ *Comparative Consideration Order*, 25 FCC Rcd at 1699.

⁵ *Id.*

⁶ *Id.* 25 FCC Rcd at 1699-1700.

⁷ Objection at 1.

⁸ *Id.*

⁹ MEMS states that the file number of the referenced 2001 LPFM Application is BNPL-20010612AVG.

¹⁰ *See* 47 C.F.R. § 73.503.

¹¹ 47 C.F.R. § 73.7003(b)(1).

applicant” is clearly identified in the FCC Form 340 Instructions.¹² The *Comparative Consideration Order* also references examples of acceptable documentation to support “established local applicant” claims. Acceptable documentation includes corporate material from the secretary of state, lists of names, addresses, and length of residence of board members, copies of governing documents requiring a 75 percent local governing board, or course brochures indicating that classes have been offered at a local campus for the preceding two years.¹³ The 2001 LPFM Application on which MEMS relies clearly does not provide any such material. Accordingly, we are unable to find that MEMS is entitled to any points as an “established local applicant.” In light of the foregoing, we find that the *Comparative Consideration Order* properly chose the Hurao Application as the tentative selectee.

Conclusions/Actions. We have evaluated the Hurao Application and find that grant of the Application will further the public interest, convenience, and necessity.

Accordingly, for the reasons set forth above, IT IS ORDERED, that the March 22, 2010, Informal Objection filed by Marianas Educational Media Services, Inc. IS DENIED.

IT IS FURTHER ORDERED, that the Application filed by Hurao, Inc. (File No. BNPED-20071022BTB) for a construction permit for a new NCE FM station in Agana, Guam, IS GRANTED subject to the condition that Hurao, Inc. must operate technical facilities substantially as proposed for a period of four years of on-air operations.¹⁴

Sincerely,



Peter H. Doyle 
Chief, Audio Division
Media Bureau

cc: Hurao, Inc.

¹² FCC Form 340 Instructions, Section IV- Point System Factors, Question 1 – Established Local Applicant.

¹³ *Comparative Consideration Order*, 25 FCC Rcd at 1685, n. 26.

¹⁴ See 47 C.F.R. § 73.7002(c).