



**Federal Communications Commission
Washington, D.C. 20554**

March 10, 2015

DA- 15-305

In Reply Refer To:

1800B3-ALV

Released: March 10, 2015

Peter Gutmann, Esq.
Womble Carlyle Sandridge & Rice, LLP
1200 19th Street, NW, 5th Floor
Washington, DC 20036

Donald Martin, Esq.
P.O. Box 8433
Falls Church, VA 22041

Dennis J. Kelly, Esq.
P.O. Box 41177
Washington, DC 20018

Dawn M. Sciarrino, Esq.
Sciarrino & Shubert PLLC
5425 Tree Line Drive
Centreville, VA 20120

In re: **New NCE-FM, Asbury, IA**
Family Life Broadcasting, Inc.
Facility ID No. 198243
File No. BNPED-20140905AAQ

Canton Seventh Day Adventist Church
Facility ID No. 198262
File No BNPED-20140908AEV

Aquinas Communications, Inc.
Facility ID No. 198234
File No BNPED-20140908AEY

Grace Community Church of Amarillo
Facility ID No. 198265
File No. BNPED-20140908AEZ

Dear Counsel:

We have before us the referenced applications of Family Life Broadcasting, Inc. ("Family"), Canton Seventh Day Adventist Church ("CSDA"), Aquinas Communications, Inc. ("Aquinas"), and Grace Community Church of Amarillo ("Grace") for a new noncommercial educational ("NCE") FM station on Channel 254A at Asbury, Iowa. For the reasons set forth below, we accept for filing and tentatively select the CSDA Application.

Background. Family, CSDA, Aquinas, and Grace filed mutually exclusive applications for a new NCE FM facility on Channel 254A at Asbury, Iowa during the August – September 2014, NCE filing window for existing, vacant, FM allotments on Channels 221 through 300 that had been reserved for NCE use.¹ Channel 254A at Asbury, Iowa² was reserved under the third test for channel reservation (the “Reservation Criteria”).³ Under these Reservation Criteria, a reservation proponent must demonstrate that (1) it is technically precluded from using a reserved band channel, and (2) it would provide a first and/or second NCE radio service to at least ten percent of the population within the 60 dBu (1 mV/m) contour of its proposed station, and that such population is at least 2,000 people.⁴ The Commission specifically advised prospective NCE applicants that the first or second NCE service requirement does not end upon allotment, but remains applicable at the application stage.⁵ The Media Bureau reiterated this directive in the *Reserved Allotment Notice*.⁶ Accordingly, Family, CSDA, Aquinas, and Grace were each required to demonstrate that its proposal would provide a first or second NCE service to at least ten percent of the population within the proposed station's service area, and that this percentage would include at least 2,000 people.⁷

Discussion. Family, Aquinas, and Grace each fails to make the required population showing and satisfy the requisite Reservation Criteria. Specifically, Family certifies that it will provide aggregated first and second NCE service to 11,682 people, 10.3 percent of the total population of 113,134 people within its proposed 60 dBu contour.⁸ Our independent studies, however, indicate that Family neglects to account for all the NCE FM stations in its service calculations, and that when all the stations are included, Family would provide aggregated first and second NCE service to less than ten percent of the total

¹ See *Media Bureau Announces Filing Window for Vacant FM Allotments Reserved for Noncommercial Educational Use*, Public Notice, 29 FCC Rcd 9530 (MB 2014) (“*Reserved Allotment Notice*”). The *Reserved Allotment Notice* identified three vacant reserved FM Channels available for application in the window.

² See *Asbury, Iowa*, Report and Order, 27 FCC Rcd 11054 (MB 2012).

³ The Commission reserves a non-reserved band allotment if the petitioner successfully demonstrates that no reserved channel could be used without causing prohibited interference to (1) TV channel 6 stations, or (2) foreign broadcast stations. The Commission adopted a third test for channel reservation in MM Docket No. 95-31. 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); Memorandum Opinion and Order, 16 FCC Rcd 5074 (2001); Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 3833 (2002); Second Report and Order, 18 FCC Rcd 6691 (2003) (“*NCE Second Report and Order*”). The Reservation Criteria are codified in 47 C.F.R. § 73.202(a)(1)(ii).

⁴ The Reservation Criteria represent a basic qualifying test, not a comparative standard. Compare 47 C.F.R. § 73.7002.

⁵ See *NCE Second Report and Order*, 18 FCC Rcd at 6705 (“Reserved allotments will be conditioned on the construction and licensing of an NCE station that provides the requisite level of first and second NCE service. In the event that all applications for a reserved band allotment fail to propose such service, the allotment will become unreserved by operation of law and subject to the Commission’s competitive bidding licensing procedures.”). See also 47 C.F.R. § 73.202(a)(1)(ii).

⁶ See *Reserved Allotment Notice*, 29 FCC Rcd at 9531.

⁷ If more than one application in a group meets this standard, the applications proceed to a comparative analysis points hearing pursuant to Section 73.7003 of the Commission’s Rules. See 47 C.F.R. § 73.7003.

⁸ See FCC File No. BNPED-20140905AAQ at Exhibit 13.

population.⁹ Aquinas certifies that it satisfies the Reservation Criteria, but neglects to provide any documentation to support its claim.¹⁰ Finally, Grace concedes that it does not meet the Reservation Criteria, explaining that “it is impossible to propose service that would create a first or second NCE service for at least ten percent of the total service population.”¹¹ In contrast, CSDA sufficiently demonstrates compliance with the Reservation Criteria. Specifically, CSDA shows that it would provide aggregated first and second NCE service to 12,354 of the 110,359 people, or 11.2 percent of the total population, encompassed within its proposed 60 dBu contour.¹² Accordingly, we find that CSDA is the only applicant to satisfy the Reservation Criteria. We therefore identify CSDA as the tentative selectee for a new NCE FM station on Channel 254A in Asbury, Iowa.

Conclusions/Actions. Accordingly, IT IS ORDERED, that Canton Seventh Day Adventist Church is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station on Channel 254A in Asbury, Iowa, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Family Life Broadcasting, Inc. (File No. BNPED-20140905AAQ), Aquinas Communications, Inc. (File No. BNPED-20140908AEY), and Grace Community Church of Amarillo (File No. BNPED-20140908AEZ), and TO GRANT the application of Canton Seventh Day Adventist Church (File No. BNPED-20140908AEV) CONDITIONED UPON that selectee's compliance with Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁹ Family failed to include the following stations in its service calculations: KNWS-FM, Waterloo, Iowa (BLED-20051102ABH); KUNI(FM), Cedar Falls, Iowa (BMLED-19841106LW); and KSUI(FM), Iowa City, Iowa (BLED-19960708KC). The addition of these three stations eliminates nearly one-half of the area receiving a first or second NCE service from Family's proposal and thereby reduces Family's aggregated first and second service population total to well below the ten percent threshold.

¹⁰ See FCC File No. BNPED-20140908AEY at Section III, Questions 3-4 and Exhibits 12-13 (stating “explanation to be provided,” but failing to ever submit support for its claim).

¹¹ See FCC File No. BNPED-20130908AEZ at Exhibit 13.

¹² See FCC File No. BNPED-20140908AEV, Technical Exhibit, Exhibit 24 at 6.