

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

HIGHLAND
COMMUNITY
COLLEGE
Rockford, Illinois

File No. BPLIF-920507DI

PECATONICA
COMMUNITY UNIT
SCHOOL DISTRICT #321
Rockford, Illinois

File No. BPLIF-931230DJ

For Construction Permit and License
in the Instructional Television Fixed
Service on Channels B1-B4

MEMORANDUM OPINION AND ORDER

Adopted: April 4, 1996;

Released: April 25, 1996

1. The Mass Media Bureau, acting pursuant to delegated authority, has before it for consideration the above-captioned mutually exclusive applications of Highland Community College (Highland) and Pecatonica Community Unit School District #321 (Pecatonica), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on Channels B1-B4 in Rockford, Illinois.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of the applicants. Educational institutions and governmental organizations that propose to serve either their own enrolled students or students at accredited schools within their respective jurisdictions establish their eligibility by accreditation from the appropriate state department of education or a recognized regional or national accrediting organization. Other ITFS applicants that propose to serve students at accredited schools outside of their respective jurisdictions must, to be eligible, submit letters of intended use from those schools and establish local program committees in those communities. See 47 C.F.R. Section 74.932(a)(1)-(5). Both applicants are qualified to be ITFS licensees. Highland is accredited by the North Central

Association of Colleges and Secondary Schools and proposes to serve its own students, as well as students enrolled at nearby accredited schools. Pecatonica is accredited by the Illinois State Board of Education and proposes to provide ITFS service to students enrolled at schools within and outside its jurisdiction.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which the ITFS spectrum has been allocated. *Instructional Television Fixed Service - Second Report and Order in MM Docket No. 83-523, (Second Report and Order)*, 101 FCC 2d 49, 65-72 (1985); 47 C.F.R. Section 74.913. First, four points are awarded to local applicants.¹ Second, three points are awarded to applicants which are accredited schools, educational institutions, or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of ITFS programming.² Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, the applicants are awarded points based on the following criteria:

Localism. Each applicant is entitled to four points for being local. Highland is an educational institution that proposes to provide ITFS service to its own enrolled students. Pecatonica is a school board proposing to provide formal educational programming to students enrolled at schools within its jurisdiction.

Accreditation. Each applicant is entitled to three points for accreditation. Highland is accredited by the North Central Association of Colleges and Secondary Schools, whereas Pecatonica is accredited by the Illinois State Board of Education.

Four-Channel Limitation. Neither applicant is the licensee of, or has filed applications for, additional ITFS channels in its proposed service area. Therefore, each applicant is entitled to two points for remaining within the four-channel limitation.

weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. Section 74.913(b)(4).

¹ A "local" applicant is an institution or organization that is physically located in the community or metropolitan area where service is proposed. *Second Report and Order*, 101 FCC 2d at 59; 47 C.F.R. Section 74.932, Note 1.

² One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of other ITFS programming. Two points are awarded for a proposed

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a programming "grid." Highland's illustrative schedule and programming grid propose an average of 41 hours of formal educational programming per channel per week. Thus, Highland is entitled to two programming merit points. Likewise, Pecatonica, whose illustrative schedule and programming grid indicate an average of 41 hours of formal educational programming per channel per week, is entitled to two programming merit points.

E- and F- Channel Group Relocation. Neither applicant is the current licensee of an E or F channel seeking to relocate to other channels. Therefore, no applicant is entitled to the one point for such applicants.

Total. Highland and Pecatonica are each entitled to a total of eleven points: four points for being local; three points for being accredited; two points for observing the four-channel limitation; and two points for proposing at least 41 hours of formal educational programming per channel per week. Because Highland and Pecatonica are tied, we must utilize our tie-breaker mechanism to determine the winning applicant.

TIE-BREAKER MECHANISM

5. When the comparative procedure results in a tie among two or more applicants, the parties are given 30 days from notification to negotiate an agreement regarding division of the use of channels. If no agreement is reached and advanced to the Commission within that time, the tentative selectee is determined through the tie-breaker mechanism detailed in *Instructional Television Fixed Service- Third Report and Order in MM Docket No. 83-523, (Third Report and Order)*, 4 FCC Rcd 4830 (1989), *Third Report and Order Reconsidered, (Third Report Recon.)*, 5 FCC Rcd 945 (1990); and 47 C.F.R. Section 74.913(d). This mechanism is based upon the submission by each applicant of the number of students at its proposed receive sites who are formally enrolled in classes for credit toward an academic degree or diploma or a legally required certification or license.³ Each applicant then has 15 days to respond to any aspect of the enrollment submissions. Once this response period has expired, the Commission compares the figures to determine if any applicant's system reaches less than 80 percent as many students as another applicant's. If so, the application resulting in service to the fewer number of students is denied, and the remaining application is granted. If more than one applicant remains, the channels or channel capacity are evenly divided among the remaining applicants. Because the tied applicants here did not reach an agreement regarding the use of the channels, we look to the enrollment figures submitted by each.

6. Pecatonica submitted timely and appropriate documentation showing that a total of 24,908 students will be served at receive sites located within and outside its ju-

isdiction. Accordingly, we credit Pecatonica with 24,908 students. Highland also submitted enrollment figures for its own enrolled students, as well as for other students not enrolled at Highland. With regard to the latter enrollment figures, we cannot count the students from Forestville High School, Dakota High School, Freeport School District #145 and Rockford College because their letters of intended use were submitted after the "B" cut-off date of November 1, 1994. Further, we cannot count the students from Harlem Consolidated Schools and Rock Valley College. Highland failed to demonstrate that these enrollment figures were "taken from a statement or submission of data made by the subject school for some other official purpose or function," nor did Highland identify the source of the figures, as required by 47 C.F.R. Section 74.913(d)(1). Accordingly, we credit Highland with only 2,563 students. Because the number of students credited to Highland, 2,563, is less than 80 percent of the number of students credited to Pecatonica, 24,908, Pecatonica will be authorized to operate facilities on Channels B1-B4 and the application of Highland will be denied.

OTHER MATTERS

7. Pecatonica proposes to lease its excess capacity for non-ITFS use, as permitted by 47 C.F.R. Section 74.931. It has submitted a copy of its lease with United States Wireless Systems, Inc., which conforms in all respects with the Commission's requirements.

8. No petitions to deny or informal objections have been filed against the application of Pecatonica, and we find the applicant fully qualified to be an ITFS licensee. We also conclude that grant of Pecatonica's application would serve the public interest, convenience and necessity.

9. Accordingly, IT IS ORDERED, That the application of Highland Community College (BPLIF-920507DI) IS DENIED, and the application of Pecatonica Community Unit School District #321 (BPLIF-931230DJ) IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

³ Only receive sites specified as of the "B" cut-off date may be used in determining the number of students served. *Third Report Recon.*, 5 FCC Rcd at 945. Moreover, applicants serving students other than their own must have submitted letters, also by the "B" cut-off date, from those receive sites indicating an intention to use the proposed service. 47 C.F.R. Section 74.911(c); and *Third Report and Order*, 4 FCC Rcd at 4832. Specifically, those letters, signed by the administrator or author-

ity responsible for curriculum planning, must indicate that the applicant's programming offerings have been viewed and that such programming will be incorporated in the sites' curricula. Further, the letters should discuss the types and amounts of programming expected to be used and an indication of the extent to which representatives from the various sites will participate in the planning, scheduling, and production of the programming. 47 C.F.R. Section 74.932, Note 2.