

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

In the Matter of)	MX Group Numbers 174, 311B, 391, 397,
)	432, 517A, 528, 529A, and 542
Threshold Fair Distribution Analysis of 9)	
Groups of Mutually Exclusive Applications)	
for Permits to Construct New or Modified)	
Noncommercial Educational FM Stations Filed)	
in the October 2007 Window)	

MEMORANDUM OPINION AND ORDER

Adopted: October 27, 2010

Released: October 28, 2010

By the Chief, Audio Division, Media Bureau

I. BACKGROUND

1. The Media Bureau (“Bureau”) has before it for comparative consideration nine groups of mutually exclusive applications for new or modified noncommercial educational (“NCE”) FM station construction permits.¹ By this Memorandum Opinion and Order (“Order”), the Bureau performs threshold analyses and identifies the tentative selectee in each group. Petitions to deny the application of any of these tentative selectees must be filed within 30 days of the date of release of this Order.²

2. The groups addressed in this Order consist of applications that were filed or amended in October 2007, during the first filing window for NCE FM applications.³ These applicants have had an opportunity to settle among themselves⁴ and are now subject to a simplified, comparative process codified in Part 73, Subpart K, of the Commission’s Rules (the “Rules”).⁵ During the first step of this process, the

¹ The Bureau issued several Public Notices in 2008 identifying groups of mutually exclusive applications. Each application analyzed herein was included in such a notice. *See Media Bureau Identifies Groups of Mutually Exclusive Applications*, Public Notice, 23 FCC Rcd 14730 (MB 2008) (Groups 501 to 546); *Media Bureau Identifies Groups of Mutually Exclusive Applications*, Public Notice, 23 FCC Rcd 9508 (MB 2008) (Groups 300 to 448); *Media Bureau Identifies Groups of Mutually Exclusive Applications*, Public Notice, 23 FCC Rcd 3914 (MB 2008) (Groups 1 to 263).

² *See* 47 C.F.R. § 73.7004(b).

³ The Bureau suspended further processing of several hundred not cut-off new and major change NCE FM applications when the Commission imposed a licensing freeze in 2000. To avoid dismissal, these applicants were required to submit amendments during the October 2007, window to provide comparative and other information. *See Media Bureau Announces NCE FM New Station and Major Change Filing Procedures (“Procedures PN”)*, Public Notice, 22 FCC Rcd 15050, 15051 (MB 2007).

⁴ *See Window Opened to Expedite Grant of New NCE Station Construction Permits*, Public Notice, 22 FCC Rcd 19438 (MB 2007).

⁵ 47 C.F.R. §§ 73.7000 – 7005.

Bureau, acting pursuant to delegated authority,⁶ uses service area population data and certifications provided by the applicants to conduct a threshold analysis.

II. THRESHOLD FAIR DISTRIBUTION PROCEDURES

3. A threshold “fair distribution” analysis is performed on mutually exclusive NCE FM groups only if applicants within the group propose to serve different communities and will provide a new first and/or second NCE aural service to a substantial population. In such cases, the Bureau, consistent with Section 307(b) of the Communications Act of 1934, as amended (the “Act”),⁷ determines whether grant of any of the applications would best further the fair, efficient, and equitable distribution of radio service among communities.⁸ An NCE FM applicant is eligible to receive a Section 307(b) preference if it would provide a first or second reserved band channel NCE aural service to at least ten percent of the population (in the aggregate), within the proposed station’s service area, provided that such service is to at least 2,000 people.⁹ An applicant must support its fair distribution claim with an exhibit identifying the population residing within the proposed station’s 60 dBu service contour and the number of people that would receive a new first or second NCE aural service.¹⁰

4. If only one applicant qualifies for a “fair distribution” preference, the preference is dispositive with respect to applications in the group that would serve different communities.¹¹ If more than one applicant in a mutually exclusive group qualifies for the preference, we compare each applicant’s first service population coverage totals.¹² An applicant will receive a dispositive fair distribution preference by proposing a first NCE aural service to at least 5,000 more potential listeners than the next highest applicant’s first service total.¹³ If no applicant is entitled to a first service

⁶ See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications*, Memorandum Opinion and Order, 22 FCC Rcd 6101, n.16 (2007). See also 47 C.F.R. §§ 0.61 and 0.283.

⁷ See 47 U.S.C. § 307(b); 47 C.F.R. § 73.7002; *Reexamination of Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7397-98 (2000) (subsequent history omitted).

⁸ See 47 U.S.C. § 307(b) (“In considering applications for licenses ... when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”); 47 C.F.R. § 73.7002(a).

⁹ See 47 C.F.R. § 73.7002(b). Applicants were required to use the most recently available, *i.e.*, 2000 Census, population data. See FCC Form 340, Instructions for Section III. An applicant’s fair distribution showing must be computed as of the time of filing (close of the filing window for applications filed prior to the window) and cannot be enhanced thereafter. See 47 C.F.R. § 73.7003(e) and (f)(3); *Procedures PN*, 22 FCC Rcd at 15051; *Reexamination of Comparative Standards for Noncommercial Applicants*, Memorandum Opinion and Order, 16 FCC Rcd 5074, 5082-83, 5086 (2001) (subsequent history omitted). However, an applicant that subsequently makes engineering changes that would diminish its fair distribution position must amend its application to reflect that diminished position. See 47 C.F.R. §§ 1.65 and 73.7003(e).

¹⁰ See FCC Form 340, Instructions for Section III, Questions 1 and 2; Exhibit 6.

¹¹ In such circumstances, the prevailing applicant need not satisfy the 5,000 person differential threshold. See *Deadline for NCE Settlements and Supplements Extended to July 19, 2001; Date for Calculating Comparative Qualifications Remains June 4, 2001; Mass Media Bureau Provides Examples of Application of NCE Section 307(b) Criteria*, Public Notice, 16 FCC Rcd 10892, 10894 (MB 2001).

¹² See 47 C.F.R. § 73.7002(b).

¹³ *Id.*

preference, we consider combined first and second NCE aural service population totals and apply the same 5,000-listener threshold. At each stage of the Section 307(b) analysis, any applicant that is comparatively disfavored in terms of eligibility or service totals is eliminated. The process ends when the Bureau determines that one applicant is entitled to a preference or that none of the remaining applicants can be selected or eliminated based on a Section 307(b) preference. In the latter case, all remaining applicants proceed to a point system analysis. Applicants that have received a Section 307(b) preference are required to construct and operate technical facilities substantially as proposed, and cannot downgrade service to the area on which the preference was based for a period of four years of on-air operations.¹⁴

III. GROUP-BY-GROUP ANALYSIS

5. This Section contains narrative descriptions of our analyses, organized chronologically by group number. Unless otherwise noted, each component of the analysis is based on information provided by each of the respective applicants.¹⁵

6. **Group 174.** This group is comprised of two applications proposing service to two different communities in New Jersey. Pensacola Christian College, Inc. (“PCC”) proposes to serve Sparta, and Calvary Chapel of Montclair (“CCM”) would serve Taylortown. Each applicant claims eligibility for a fair distribution preference.¹⁶ PCC’s claim, however, is erroneous because it failed to consider the authorizations of WNTI, WNJY, and WDNJ. It does not qualify for a fair distribution preference. CCM’s claim appears reasonable. Accordingly, PCC is eliminated, and CCM is the tentative selectee in Group 174.

7. **Group 311B.**¹⁷ This group is comprised of six applications proposing service to five different communities in California. Living Word Christian Radio (“LWCR”) and Vida Worth Vivir, Inc. (“VWV”) would each serve Williams. The other applicants are: Nevada City Community Broadcast Group (“NCBG”) for Willows; Calvary Chapel Oroville (“CCO”) for Butte City; Centro de Intercesion y Adoracion Internacional, Inc. (“CIAI”) for Yuba City; and American Educational Broadcasting, Inc. (“AEB”) for Colusa. Four applicants claim eligibility for a fair distribution preference.¹⁸ VWV and CIAI

¹⁴ 47 C.F.R. § 73.7005(b).

¹⁵ Specifically, information relating to the applicants’ Section 307(b) claims including, where applicable, populations receiving first and/or second NCE radio services were reported in applicant responses to Questions III(1) and (2) and associated exhibits.

¹⁶ See PCC and CCM Applications, Questions III(1), III(2), and associated exhibits. PCC claims that its 60 dBu contour encompasses 59,372 people, and that its claimed aggregated first and second NCE service is all 59,372 people. CCM’s 60 dBu contour encompasses 24,839 people, and its claimed aggregated first and second NCE service is 18,615 people. Thus, each claims that it would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people. As discussed above, however, PCC’s claim is incorrect.

¹⁷ Group 311, which originally contained 13 applications, was bifurcated by a settlement in which two applications were voluntarily dismissed and one application was amended to a singleton. We consider 311B herein. Group 311A was considered in a separate order. See *Comparative Consideration of 52 Groups of Mutually Exclusive Applications*, Memorandum Opinion and Order, 25 FCC Rcd 8793 (2010).

¹⁸ See LWCR, CCO, NCBG, and AEB Applications, Questions III(1), III(2), and associated exhibits. LWCR claims that it would provide aggregated first and second NCE service to 16,291 of the 16,552 people encompassed within its 60 dBu contour; CCO to 19,809 of the 31,887 people; NCBG to 7,979 of the 27,712 people; and AEB to 11,404 of the 27,782 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

do not, and each is therefore eliminated. NCBG is the only applicant to claim a first service preference.¹⁹ Accordingly, LWCR, CCO, and AEB are each eliminated, and NCBG is the tentative selectee in Group 311B.

8. **Group 391.** This group is comprised of seven applications proposing service to seven different communities in California and Nevada. Mission Valley Christian Fellowship (“MVCF”) and Gospel Spots, Inc. (“GSI”) would serve Janesville and Susanville, California, respectively. The other applicants, each proposing service in Nevada, are: MVCF for Fenley; Progressive Leadership Alliance of Nevada (“PLAN”) for Sun Valley; Primera Iglesia Evangelica de Apostoles y Profetas (“PIEAP”) for Miriam; Iglesia Christiana el Verbo de Dios, Inc. (“ICVD”) for Spanish Spring; and Family Stations, Inc. (“Family”) for Fernley. ICVD certifies that it is eligible for a fair distribution preference.²⁰ The other applicants do not claim a preference. Accordingly, MVCF-Janesville, GSI, MVCF-Fenley, PLAN, PIEAP, and Family are each eliminated, and ICVD is the tentative selectee in Group 391.

9. **Group 397.** This group consists of 11 applications proposing service to eight different communities in Ohio. Two applicants propose to serve each of the following communities: for Miamisburg, The President & Trustees of Miami University (“MU Trustees”) and Wright State University (“WSU”); for Wilmington, Electronic Applications Radio Service, Inc. (“EARS”) and 24-7 Broadcasting, Inc. (“24-7B”); and for Troy, The Helpline (“Helpline”) and Calvary Broadcasting, Inc. (“Calvary”). The other applicants are: Saidnewsfoundation (“Saidnews”) for Middletown; Educational Media Foundation (“EMF”) for Pleasant Hill; 24-7B for Tipp City; Bridgebuilders International Leadership Network (“Bridgebuilders”) for Brookville; and Dayton Acorn (“DA”) for Dayton. WSU, EARS, EMF, and Calvary each certify eligibility for a fair distribution preference.²¹ The remaining applicants do not, and accordingly, Saidnews, MU Trustees, Helpline, 24-7B (both applications), Bridgebuilders, and DA are each eliminated. EARS is the only applicant to claim a first service preference.²² Accordingly, WSU, EMF, and Calvary are each eliminated, and EARS is the tentative selectee in Group 397.

10. **Group 432.** This group is comprised of four applications proposing service to three different communities in Texas. Oasis of Faith, Inc. (“Oasis”) and Vision Celestial (“VC”) would each serve San Angelo. Iglesia Jesucristo es mi Refugio, Inc. (“IJR”) and The Center for Education Nonprofit Corp. (“CENC”) propose service to Huldale and Eldorado, respectively. CENC claims and documents eligibility for a fair distribution preference.²³ VC also certifies that it is eligible for a fair distribution

¹⁹ NCBG claims to provide first NCE service to 7,979 people.

²⁰ See ICVD Application, Question III(1), III(2), and associated exhibits. ICVD claims that it would provide aggregated first and second NCE service to 15,399 of the 63,347 people encompassed within its 60 dBu contour. Thus, ICVD would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

²¹ See WSU, EARS, EMF, and Calvary Applications, Questions III(1), III(2), and associated exhibits. WSU claims that it would provide aggregated first and second NCE service to 42,019 of the 164,157 people encompassed within its 60 dBu contour; EARS to all 13,647 of the 13,647 people; EMF to 6,167 of the 57,547 people; and Calvary to 5,828 of the 38,727 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

²² EARS claims to provide first NCE service to 13,000 people.

²³ See CENC Application, Question III(1), III(2), and associated exhibits. CENC claims that it would provide aggregated first and second NCE service to 4,807 of the 31,602 people encompassed within its 60 dBu contour.

preference, but it fails to provide sufficient documentation to support its claim.²⁴ Accordingly, VC is eliminated. Oasis and IJR certify that they are each ineligible for a preference. Oasis and IJR are therefore eliminated, and CENC is the tentative selectee in Group 432.

11. **Group 517A.**²⁵ This group consists of 18 applications proposing service to 14 different communities in Michigan and Wisconsin. Three applicants propose to serve Marquette, Michigan: Korkee Inc. (“Korkee”), Board of Trustees of Northern Michigan University (“NMU Trustees”), and Christianradiobroadcasting.Org, Inc. (“CRB.Org”). Two applicants propose to serve Houghton, Michigan: Korkee and NMU Trustees.²⁶ The remaining applicants proposing service in Michigan are: Mineral Springs Public Radio, Inc. (“MSPR”) for Hancock; Grace Christian Fellowship (“GCF”) for Calumet; Korkee for Iron Mountain and Iron River; Board of Regents of the University of Wisconsin System (“UW Regents”) for Niagara; and CRB.Org for Munising. Two applicants propose service to Rhinelander, Wisconsin: Northwoods Catholic Radio (“NCR”) and Christian Vision Inc. (“CVI”). The remaining applicants, each proposing service in Wisconsin, are: Milewski Nature Fund, Inc. (“Milewski”) for Thorp; White Pine Community Broadcasting, Inc. (“WPCB”) for Iron Mountain; State of Wisconsin – Educational Communications Board (“WI-ECB”) for Park Falls; Lakeland Seventh-Day Adventist Church (“LSDA”) for Minocqua; and WRVM, Inc. (“WRVM”) for Eagle River.

12. In nine of the 18 applications, the applicant claims and documents that it is eligible for a fair distribution preference.²⁷ The following applicants certify that they are not eligible for a preference, and, accordingly, are each eliminated: MSPR, GCF, Korkee (all four applications), NMU Trustees (both applications), and CRB.Org-Marquette.

13. In three of the remaining nine applications, the applicant claims a first NCE service preference. The following applicants do not, and, accordingly, are each eliminated: WPCB, WI-ECB, LSDA, WRVM, NCR, and CVI. UW Regents claims that it would provide first NCE service to 8,085 people; CRB.Org-Munising to 2,539 people; and Milewski to 4,873 people. The first service proposals

Thus, CENC would provide combined first and second NCE service to at least ten percent of the population within its 60 dBU contour and to more than 2,000 people.

²⁴ VC submits a map purportedly showing the area in which it would provide a new first and second NCE service, but VC does not enumerate the population that would receive first and second NCE service. Accordingly, we find VC's claim of 307(b) eligibility unreliable and lacking the basic information that is needed to include and compare the proposal with the others in the group.

²⁵ Group 517, which originally contained 27 applications, was bifurcated by a settlement in which one application was voluntarily dismissed and one application was amended to a singleton. We consider Group 517A herein. Group 517B was considered in a previous order. *See Comparative Consideration of 24 Groups of Mutually Exclusive Applications*, Memorandum Opinion and Order, FCC 10-157 (Sept. 2, 2010).

²⁶ NMU Trustees' application to serve Iron Mountain, Michigan (FCC File No. BNPED-20071019AGU) was recently dismissed, and, accordingly, the application is not included in the Group 517A fair distribution analysis. The dismissal, however, is not yet final.

²⁷ *See* UW Regents, CRB.Org-Munising, Milewski, WPCB, WI-ECB, LSDA, WRVM, NCR, and CVI Applications, Questions III(1), III(2), and associated exhibits. UW Regents claims that it would provide aggregated first and second NCE service to 11,825 of the 39,260 people encompassed within its proposed 60 dBU contour; CRB.Org-Munising to 2,539 of the 9,560 people; Milewski to 4,873 of the 39,760 people; WPCB to 4,587 of the 34,129 people; WI-ECB to all 12,394 of the 12,394 people; LSDA to 41,493 of the 60,779 people; WRVM to 41,829 of the 56,139 people; NCR to 47,551 of 61,649 people; and CVI to 43,895 of the 55,091 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBU contour and to more than 2,000 people.

are comparable because none exceeds the next best by at least 5,000 people. Accordingly, we consider the applicants' combined first and second NCE service population totals.

14. UW Regents certifies that it would provide a first or second NCE service to 11,825 people (8,085 first service plus 3,740 second service); CRB.Org to 2,539 people (2,539 first service plus 0 second service); and Milewski to 4,873 people (4,873 first service plus 0 second service). UW Regents would provide new NCE service to at least 5,000 more people than each of the other proposals for different communities. UW Regents is therefore the tentative selectee in Group 517A.

15. **Group 528.** This group consists of seven applications proposing service to four different communities in Ohio and Pennsylvania. Servants of Mary ("SOM") proposes to serve Geneva, Ohio. Four applicants propose service to Erie, Pennsylvania: Edinboro Early School ("EES"), Family Life Broadcasting, Inc. ("FLB"), Call Communications Group, Inc. ("Call"), and Bible Broadcasting Network, Inc. ("BBN"). Alabaster, Inc. ("Alabaster") would serve North East, Pennsylvania, and JCM Radio of NY, Inc. ("JCM") proposes to serve Fairfield, Pennsylvania. SOM claims and documents eligibility for a fair distribution preference.²⁸ JCM also certifies that it is eligible for a fair distribution preference, but it fails to provide sufficient documentation to support its claim.²⁹ Accordingly, JCM is eliminated. EES, FLB, Alabaster, Call, and BBN certify that they are each ineligible for a preference and are therefore eliminated. SOM, the only applicant to claim and document eligibility for a fair distribution preference, is the tentative selectee in Group 528.

16. **Group 529A.**³⁰ This group is comprised of two applications proposing service to two different communities in Pennsylvania. Central Pennsylvania Christian Institute, Inc. ("CPCI") proposes to serve Huntingdon, and KC Club, Inc. ("KC") would serve Bellefonte. Each applicant claims eligibility for a fair distribution preference.³¹ KC is the only applicant to claim a first service preference.³² Accordingly, CPCI is eliminated, and KC is the tentative selectee in Group 529A.

17. **Group 542.** This group consists of 24 applications proposing service to seventeen different communities in New York and Vermont. The applicants proposing service in New York are: Northeast Gospel Broadcasting Inc. ("NGB") for Old Forge; State University of New York ("SUNY") for Prospect; Mars Hill Broadcasting Co., Inc. ("Mars") for Boonville; Family Rosary Radio ("FRR") for Rome;

²⁸ See SOM Application, Questions III(1), III(2), and associated exhibits. SOM claims that it would provide aggregated first and second NCE service to 34,460 of the 109,984 people encompassed within its 60 dBu contour. Thus, SOM would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

²⁹ JCM submits a map purportedly showing the area in which it would provide a new first and second NCE service, but JCM does not enumerate the population that would receive first and second NCE service. Accordingly, we find JCM's claim of 307(b) eligibility unreliable and lacking the basic information that is needed to include and compare the proposal with the others in the group.

³⁰ Group 529 originally consisted of 34 applications. A partial settlement resulted in the grant of some of those applications and the dismissal of others. The settlement also had the side effect of bi-furcating the group, so that the remaining, non-settling applications now comprise two distinct subgroups. We analyze Group 529A herein. Group 529B, consisting of three applications, will be considered in a separate order.

³¹ See CPCI and KC Applications, Questions III(1), III(2), and associated exhibits. CPCI claims that it would provide aggregated first and second NCE service to 86,241 of the 149,171 people encompassed within its 60 dBu contour; KC to 33,936 of the 69,505 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

³² KC claims to provide first NCE service to 24,432 people.

Foothills Public Radio, Inc. (“Foothills”) for Westport; and Ho.ly, Inc. (“Ho.ly”) for Postville and Lake George. Three applicants propose to serve Middlebury, Vermont: Champlain Music Appreciation Society, Inc. (“CMAS”), Bristol Radio, Inc. (“Bristol”), and Vermont Public Radio (“VPR”), which filed two applications, one proposing service on Channel 202 and the other for Channel 206. Two applicants propose to serve each of the following Vermont communities: for Burlington, Bangor Baptist Church (“BBC”) and Bridgebuilders International Leadership Network (“Bridgebuilders”); for St. Johnsbury, Christian Ministries, Inc. (“CMI”) and VPR; for Vergennes, Wilbur Gospel Communications and Foundation (“Wilbur”) and WAMC; and for Montpelier, Onion River Community Access Media, Inc. (“ORCAM”) and VPR. The remaining applicants, each proposing service in Vermont, are: CMI for Essex Junction; Radio America Media, Corp. (“RAM”) for Waterbury; David Goddette, Board of Trustees, Vermont State College (“VSC Trustees”) for Johnson; and NC Friends Broadcasting, Inc. (“NCFB”) for Jericho.³³

18. In 16 of the 24 applications, the applicant claims and documents that it is eligible for a fair distribution preference.³⁴ VSC Trustees also certifies eligibility for a preference, but it fails to identify the number of people who would receive first or second NCE service.³⁵ VSC Trustees is therefore eliminated. The following applicants certify that they are not eligible for a preference, and, accordingly, are each eliminated: SUNY, Foothills, Ho.ly (both applications), BBC, CMAS, and NCFB.

19. In seven of the remaining 16 applications, the applicant claims a first NCE service preference. The following do not, and, accordingly, are each eliminated: CMI (both proposals), Wilbur, ORCAM, RAM, VPR-St. Johnsbury, Bridgebuilders, WAMC, and Bristol. NGB claims that it would provide first NCE service to 9,399 people; Mars to 10,327 people; FRR to 10,190 people; VPR-Waterbury to 5,354 people; VPR-Montpelier to 2,365 people; VPR-Middlebury (Ch. 202) to 4,740 people; and VPR-Middlebury (Ch. 206) to 9,336 people. The first service proposals are comparable because none exceeds the next best by at least 5,000 people. Accordingly, we consider the applicants’ combined first and second NCE service population totals.

20. NGB certifies that it would provide a first or second NCE service to 12,719 people (9,399 first service plus 3,320 second service); Mars to 20,135 people (10,327 first service plus 9,808 second service); FRR to 18,956 people (10,190 first service plus 8,766 second service); VPR-Waterbury to 18,010 people (5,354 first service plus 12,656 second service); VPR-Montpelier to 22,158 people (2,365 first service plus 19,793 second service); VPR-Middlebury (Ch. 202) to 29,426 people (4,740 first service plus 24,686 second service); and VPR-Middlebury (Ch. 206) to 46,746 people (9,336 first service plus 37,410 second service). VPR-Middlebury (Ch. 206) would provide new NCE service to at least 5,000

³³ VSC Trustees proposes a major change to the construction permit for its NCE FM Station WJSC-FM. Each of the other applicants in the group proposes a new station.

³⁴ See NGB, Mars, FRR, CMI, Wilbur, ORCAM, RAM, VPR, Bridgebuilders, WAMC, and Bristol Applications, Questions III(1), III(2), and associated exhibits. NGB claims that it would provide aggregated first and second NCE service to 12,719 of the 17,664 people encompassed within its proposed 60 dBu contour; Mars to 20,135 of the 34,431 people; FRR to 18,956 of the 69,068 people; CMI to 10,308 of the 29,284 people for St. Johnsbury, and to 37,209 of the 49,061 people for Essex Junction; Wilbur to 69,876 of the 136,884 people; ORCAM to 5,324 of the 27,461 people; RAM to 27,220 of the 44,704 people; VPR to 18,010 of 18,223 people for Waterbury, to 3,599 of the 26,464 people for St. Johnsbury, to all 22,158 of the 22,158 people for Montpelier, to 29,426 of the 32,540 people for Channel 202 Middlebury, and to 46,746 of the 50,217 people for Channel 206 Middlebury; Bridgebuilders to 44,649 of the 135,641 people; WAMC to 26,549 of the 100,710 people; and Bristol to 15,587 of the 16,127 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

³⁵ VSC Trustees submits a map but no numbers to verify its claim.

more people than each of the other proposals for different communities. VPR-Middlebury (Ch. 206) is therefore the tentative selectee in Group 542.

IV. NEXT STEPS.

21. **Acceptability Studies and Filing of Petitions.** Once the Bureau identifies a tentative selectee pursuant to the fair distribution process, the next step is to consider whether the selectee's application has defects.³⁶ If found acceptable for filing, public notice of that fact is given, and petitions to deny may be filed within 30 days following the release of the public notice.

22. The Bureau has studied the applications of each tentative selectee identified herein and has determined that each is acceptable for filing. Each tentative selectee identified in this Order appears to be fully qualified to become the licensee of the new NCE FM station it has proposed. We tentatively conclude that the grant of their applications would serve the public interest, convenience, and necessity. It is our intention to grant each application if, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application. Such determinations of grantability may, of course, involve additional matters that may impact the timing or outcome of a decision. For example, a proposal to serve an area near the United States border with Canada or Mexico cannot become ripe for grant prior to the successful completion of international coordination.

23. Any argument that the tentatively selected application should not be granted should be raised in such a petition, even if the objection relates only indirectly to the tentative selectee's qualifications. Parties should not raise such matters as petitions for reconsideration of the instant Order because the fair distribution analyses herein take no final action on any application, and petitions for reconsideration do not lie against such interlocutory decisions.³⁷

24. **Severance for Purposes of Petitions, Appeals and Finality.** We are including a provision in the ordering clauses herein that each decision involving a mutually exclusive group is to be considered distinct and separate for purposes of petitions to deny, petitions for reconsideration, review on the Commission's own motion, and appeals. The timing of any action disposing of a petition or appeal affecting a particular group will not delay the finality of our decision with respect to any other group.

25. **Forthcoming Staff Action.** We direct the staff, once the public notice period has run, to conduct a final study of each tentatively selected application in accordance with its routine processing procedures. The staff studies should consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of the tentatively selected application would serve the public interest. If no such question exists, we direct the staff to grant the applications on the basis of the fair distribution analyses made herein and dismiss all competing applications.

³⁶ If a tentative selectee's application is found unacceptable for filing, it is dismissed. The applicant then has one opportunity to submit a curative amendment and a petition for reconsideration requesting reinstatement *nunc pro tunc* within 30 days. The amendment must be minor and may not alter the fair distribution preference. See 47 C.F.R. § 73.3522(b)(1). The staff will not reinstate the application of a tentative selectee that is unable to cure all defects.

³⁷ See *id.* § 1.106 (a) (1). See also *Patrick J. Vaughn, Esq.*, Letter, 22 FCC Rcd 11165 (MB 2007).

V. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED, That each decision involving a mutually exclusive group in this *Memorandum Opinion and Order* shall be deemed a distinct and separate decision for purposes of petitions to deny, petitions for reconsideration, review on the Commission's own motion, and court appeals.³⁸ If any decision in this *Memorandum Opinion and Order* is declared invalid for any reason, the remaining portions shall be severable from the invalid part and SHALL REMAIN in full force and effect to the fullest extent permitted by law.

27. **Group 174.** Accordingly, IT IS ORDERED, That Calvary Chapel of Montclair, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Taylortown, New Jersey, 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 intend, by public notice, TO DISMISS the mutually exclusive application of Pensacola Christian College, Inc. (File No. BNPED-20071022DXT) and TO GRANT the application of Calvary Chapel of Montclair, Inc. (File No. BNPED-20071022AYI) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

28. **Group 311B.** Accordingly, IT IS ORDERED, That Nevada City Community Broadcast Group is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Willows, California, 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 intend, by public notice, TO DISMISS the mutually exclusive applications of Living Word Christian Radio (File No. BNPED-20071012AGU), Calvary Chapel Oroville (File No. BNPED-20071018ADZ), Vida Worth Vivir, Inc. (File No. BNPED-20071019AAR), Centro de Intercesion y Adoracion Internacional, Inc. (File No. BNPED-20071022AIK), and American Educational Broadcasting, Inc. (File No. BNPED-20071022BOT), and TO GRANT the application of Nevada City Community Broadcast Group (File No. BNPED-20071019AZM) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

29. **Group 391.** IT IS FURTHER ORDERED, That the Application filed by Iglesia Christiana el Verbo de Dios, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Spanish Spring, Nevada, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, TO DISMISS the mutually exclusive applications of Mission Valley Christian Fellowship (File Nos. BNPED-20071017ACV and 20071017ACY), Gospel Spots, Inc. (File No. BNPED-20071019AOJ), Progressive Leadership Alliance of Nevada (File No. BNPED-20071017AJD), Primera Iglesia Evangelica de Apostoles y Profetas (File No. BNPED-20071018BAK), and Family Stations, Inc. (BNPED-20071022ALD), and TO GRANT the application of Iglesia Christiana el Verbo de Dios, Inc. (File No. BNPED-20071019AHQ)

³⁸ See 5 U.S.C. §§ 702, 704, and 706; 47 U.S.C. §§ 309(d), 402(b), and 405; 47 C.F.R. §§ 1.106-08, 1.115, 1.120, and 73.7004. In cases that involve separate mutually exclusive groups but present common issues, the petitions or appeals may be filed jointly or may be consolidated at the discretion of the Commission or the court. See, e.g., FED. R. APP. P. 3(b).

CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

30. **Group 397.** IT IS FURTHER ORDERED, That the Application filed by Electronic Applications Radio Service, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Wilmington, Ohio, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, TO DISMISS the mutually exclusive applications of Saidnewsfoundation (File No. BNPED-20071017AIU), The President & Trustees of Miami University (File No. BNPED-20071019ALL), Wright State University (File No. BNPED-20071019AMU), Educational Media Foundation (File No. BNPED-20071019BAL), The Helpline (File No. BNPED-20071019BCO), 24-7 Broadcasting, Inc. (File Nos. BNPED-20071022AAO and 20071022AQJ), Bridgebuilders International Leadership Network (File No. BNPED-20071022AGE), Calvary Broadcasting, Inc. (File No. BNPED-20071022AMU), and Dayton Acorn (File No. BNPED-20071022BIK), and TO GRANT the application of Electronic Applications Radio Service, Inc. (File No. BNPED-20071019AQH) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

31. **Group 432.** IT IS FURTHER ORDERED, That the Application filed by The Center for Education Nonprofit Corp. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Eldorado, Texas, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, TO DISMISS the mutually exclusive applications of Iglesia Jesucristo es mi Refugio, Inc. (File No. BNPED-20071017AID), Oasis of Faith, Inc. (File No. BNPED-20071019ACP), and Vision Celestial (BNPED-20071019AWJ), and TO GRANT the application of The Center for Education Nonprofit Corp. (File No. BNPED-20071022BKS) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

32. **Group 517A.** IT IS FURTHER ORDERED, That the Application filed by Board of Regents of the University of Wisconsin System is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Niagara, Michigan, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, TO DISMISS the mutually exclusive applications of Mineral Springs Public Radio, Inc. (File No. BNPED-20071012AGJ), Grace Christian Fellowship (File No. BNPED-20071012AKB), Korkee Inc. (File Nos. BNPED-20071017AJK, 20071017AJN, 20071017AJO, and 20071017AJQ), Board of Trustees of Northern Michigan University (File Nos. BNPED-20071019AHL and 20071019ANJ), Christianradiobroadcasting.Org, Inc. (File Nos. BNPED-20071019APH and 20071019AQG), Milewski Nature Fund, Inc. (File Nos. BNPED-20071012APU), White Pine Community Broadcasting, Inc. (File No. BNPED-20071018AIO), State of Wisconsin – Educational Communications Board (File No. BNPED-20071018AXC), Lakeland Seventh-Day Adventist Church (File No. BNPED-20071019ADB), WRVM, Inc. (File No. BNPED-20071019ARZ), Northwoods Catholic Radio (File No. BNPED-20071022ASC), and Christian Vision Inc. (File No. BNPED-20071022AVQ), and TO GRANT the application of Board of Regents of the University of Wisconsin System (File No. BNPED-20071019AIG) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

33. **Group 528.** IT IS FURTHER ORDERED, That the Application filed by Servants of Mary is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Geneva, Ohio, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, TO DISMISS the mutually exclusive applications of Edinboro Early School (File No. BNPED-20071015AGY), Family Life Broadcasting, Inc. (File No. BNPED-20071017AKP), Alabaster, Inc. (File No. BNPED-20071018ABP), Call Communications Group, Inc. (File No. BNPED-20071019AAV), Bible Broadcasting Network, Inc. (File No. BNPED-20071019APK), and JCM Radio of NY, Inc. (File No. BNPED-20071019BDZ), and TO GRANT the application of Servants of Mary (File No. BNPED-20071022AUP) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

34. **Group 529A.** IT IS FURTHER ORDERED, That the Application filed by KC Club, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Bellefonte, Pennsylvania, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, TO DISMISS the mutually exclusive application of Central Pennsylvania Christian Institute, Inc. (File No. BNPED-20071018AYH), and TO GRANT the application of KC Club, Inc. (File No. BNPED-20071022BGP) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

35. **Group 542.** IT IS FURTHER ORDERED, That the Application of Vermont Public Radio is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Middlebury, Vermont, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's applications, we intend, by public notice, TO DISMISS the mutually exclusive applications of Northeast Gospel Broadcasting Inc. (File No. BNPED-20071012ABI), State University of New York (File No. BNPED-20071018AES), Mars Hill Broadcasting Co., Inc. (File No. BNPED-20071022AKS), Family Rosary Radio (File No. BNPED-20071022AVJ), Foothills Public Radio, Inc. (File No. BNPED-20071022BVI), Ho.ly, Inc. (File Nos. BNPED-20071022ANW and 20071022ANY), Bangor Baptist Church (File No. BNPED-20071012AKC), Christian Ministries, Inc. (File Nos. BNPED-20071012ASX and 20071012ASZ), Wilbur Gospel Communications and Foundation (File No. BNPED-20071015AEZ), Onion River Community Access Media, Inc. (File No. BNPED-20071017AJV), Radio America Media, Corp. (File No. BNPED-20071018AJQ), Vermont Public Radio (File Nos. BNPED-20071018BBU, 20071018BCA, 20071018BCH, and 20071018BDR), David Coddette, Board of Trustees, Vermont State College (File No. BMJPED-20071019ACQ), Bridgebuilders International Leadership Network (File No. BNPED-20071019ANA), WAMC (File No. BNPED-20071019ATB), Champlain Music Appreciation Study, Inc. (File No. BNPED-20071022ANH), Bristol Radio, Inc. (File No. BNPED-20071022BAU), and NC Friends Broadcasting, Inc. (File No. BNPED-20071022BOL), and TO GRANT the application of Vermont Public Radio (File No. BNPED-20071018BDU) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
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