



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

September 25, 2012

**DA 12-1529**

*In Reply Refer To:*

1800B3-ATS

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**In re: NCE Reserved Allotment Group 7**

New NCE(FM), Sutter Creek, CA  
Facility ID No. 184543  
Farms of Amador  
File No. BNPED-20100224ACJ

New NCE(FM), Sutter Creek, CA  
Facility ID No. 184691  
Calvary Chapel of Amador County, Inc.  
File No. BNPED-20100225AAO

New NCE(FM), Sutter Creek, CA  
Facility ID No. 184897  
Sutter Hill Seventh-Day Adventist Church  
File No. BNPED-20100225ADX

New NCE(FM), Sutter Creek, CA  
Facility ID No. 185149  
Sonora Sierra Heritage Foundation  
File No. BNPED-20100226AJU

**Petitions to Deny**

Dear Counsel and Ms. Coryell:

We have before us (1) the applications of Farms of Amador (“Farms”), Calvary Chapel of Amador County, Inc. (“CCAC”), Sutter Hill Seventh-Day Adventist Church (“SHSDA”), and Sonora Sierra Heritage Foundation (“SSHF”), for new noncommercial educational (“NCE”) FM stations at Sutter Creek, California; (2) Farms’ Petition to Deny the application of CCAC (“Farms-CCAC Petition”);<sup>1</sup> (3) Farms’ Petition to Deny the application of SHSDA (“Farms-SHSDA Petition”);<sup>2</sup> (4) CCAC’s Petition to Deny the application of Farms (“CCAC-Farms Petition”);<sup>3</sup> (5) CCAC’s Petition to Deny the application of SHSDA (“CCAC-SHSDA Petition”);<sup>4</sup> and (6) CCAC’s Petition to Deny the application of SSHF (“CCAC-SSHF Petition”).<sup>5</sup> For the reasons set forth below, we deny the Farms-CCAC Petition, deny the Farms-SHSDA Petition, deny the CCAC-Farms Petition, deny the CCAC-SHSDA Petition, and deny the CCAC-SSHF Petition.

**Background.** NCE Reserved Allotment Group 7 consisted of nine mutually exclusive applications proposing service on vacant Channel 298A at Sutter Creek, California, an allotment reserved for an NCE station by means of the third channel reservation showing.<sup>6</sup> Pursuant to established procedures,<sup>7</sup> the Commission engaged in a point system selection process in which it awarded Farms, CCAC, SHSDA, and SSHF three points each as established local applicants, and two points each for diversity of ownership.<sup>8</sup> Farms, CCAC, SHSDA, and SSHF proceeded to a tie-breaker and, because tie-breakers did not result in a winner, the Commission identified these applicants as the tentative selectees of Group 7 on a time-sharing basis.<sup>9</sup> The Commission then accepted their applications for filing and announced a 30-day period for filing petitions to deny.<sup>10</sup> Farms and CCAC timely filed their multiple petitions to deny.

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<sup>1</sup> The Farms-CCAC Petition was filed on June 2, 2011. CCAC filed an Opposition on June 23, 2011. Farms filed a Reply on July 13, 2011 (“Farms-CCAC Reply”). CCAC filed a Statement for the Record on September 30, 2011. Farms filed a Motion to Strike on October 7, 2011.

<sup>2</sup> The Farms-SHSDA Petition was filed on June 2, 2011. SHSDA’s filed an Opposition on July 8, 2011 (“Farms-SHSDA Opposition”). SHSDA filed a Further Opposition to Petition to Deny on July 18, 2011 (“Further Opposition”). Farms filed a Reply to Further Opposition to Petition to Deny on July 28, 2011 (“Farms-SHSDA Reply”).

<sup>3</sup> The CCAC-Farms Petition was filed on June 2, 2011. Farms filed an Opposition on June 15, 2011 (“CCAC-Farms Opposition”).

<sup>4</sup> The CCAC-SHSDA Petition was filed on June 2, 2011. SHSDA filed an Opposition on June 15, 2011 (“CCAC-Farms Opposition”). CCAC concurrently filed an amendment to its application (“CCAC Amended Application”).

<sup>5</sup> The CCAC-SSHF Petition was filed on June 2, 2011. SSHF did not file an Opposition to CCAC’s Petition to Deny.

<sup>6</sup> *Comparative Consideration of 37 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the February 2010 and October 2007 Filing Windows*, Memorandum Opinion and Order, 26 FCC Rcd 7008, 7018 (2011) (“*Tentative Selectee Order*”).

<sup>7</sup> See 47 C.F.R. § 73.7003 (point system selection procedures); see also *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000); Memorandum Opinion and Order, 16 FCC Rcd 5074, 5105 (2001) (“*NCE Comparative MO&O*”), *reversed in part on other grounds*, *NPR v. FCC*, 254 F.3d 226 (D.C. Cir. 2001).

<sup>8</sup> See *Tentative Selectee Order*, 26 FCC Rcd at 7018-19.

<sup>9</sup> *Id.* at 7019.

<sup>10</sup> *Id.* at 7051-52.

**Discussion.** Pursuant to Section 309(d) of the Communications Act of 1934, as amended (“Act”),<sup>11</sup> a petition to deny must provide properly supported allegations of fact that, if true, establish a substantial and material question of fact that granting the application would be *prima facie* inconsistent with the public interest, convenience and necessity.<sup>12</sup>

Farms’ Petition to Deny the CCAC Application. Farms argues that the CCAC Application should be denied because: 1) CCAC is allegedly not eligible to be an NCE licensee, and 2) CCAC allegedly did not have reasonable assurance of site availability for its proposed transmitter site. We discuss each argument in turn below.

*CCAC’s NCE Eligibility.* Farms argues that CCAC is not eligible to hold an NCE license because CCAC’s objective is religious and not educational.<sup>13</sup> In applying Section 73.503 of the Rules, the Commission has required that NCE applicants must be: (a) a government or public educational agency, board or institution; (b) a private, nonprofit educational organization; or (c) a nonprofit entity with a demonstrated educational purpose.<sup>14</sup> An applicant applying as (c) above must specifically show: (i) that it is, in fact, a nonprofit educational organization, (ii) that it has an educational objective, and (iii) how its programming will further that objective.<sup>15</sup> The requirement that NCE licensees provide programming that advances an educational objective may be satisfied by a variety of programs, including, but not limited to, “instructional programs, programming selected by students, bible study, cultural programming, in-depth news coverage, and children’s programs such as Sesame Street that entertain as they teach.”<sup>16</sup> We have also stated that “in order to qualify as an educational station, it is not necessary that the proposed programming be exclusively educational.”<sup>17</sup>

An applicant organization such as a church or ministry is eligible to apply and hold an NCE license.<sup>18</sup> In *Way of the Cross*, the Commission stated that “noncommercial, educational organizations, even though religiously oriented, can qualify upon an appropriate showing for licenses on reserved channels.”<sup>19</sup> We thus find Farms’ argument meritless. CCAC’s Articles of Incorporation state that it is a nonprofit corporation.<sup>20</sup> Regarding CCAC’s educational purpose, CCAC’s Bylaws specify that its objectives include “[a]ssisting and furthering the task of providing Biblical Scripture to the community and other groups through the Holy Scriptures and other printed material by speaking at bible studies,

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<sup>11</sup> 47 U.S.C. § 309(d) (2006).

<sup>12</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (petitions to deny must contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>13</sup> Farms-CCAC Petition at 2. Farms also argued that SHSDA was not qualified to be an NCE licensee. See Farms-SHSDA Petition at 1-2. However, Farms withdrew that argument. See Farms-CCAC Reply at 3-4.

<sup>14</sup> 47 C.F.R. § 73.503(a).

<sup>15</sup> See, e.g., *Denny and Marge Hazen Industries, Inc.*, Letter, 23 FCC Rcd 11579, 11581 (MB 2008); *Music Ministries, Inc.*, Hearing Designation Order, 9 FCC Rcd 3628 (MMB 1994).

<sup>16</sup> *In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 21167, 21169 (1998).

<sup>17</sup> *Lower Cape Communications, Inc.*, Memorandum Opinion and Order, FCC 80-453, 47 RR 2d 1577, 1579 (1980). See also *Florence Bridges*, Memorandum Opinion and Order, FCC 78-719, 44 RR 2d 667, 668 (1978).

<sup>18</sup> *Way of the Cross of Utah, Inc.*, Memorandum Opinion and Order, 101 FCC 2d 1368 (1985) (“*Way of the Cross*”).

<sup>19</sup> *Id.* at 1374.

<sup>20</sup> CCAC Application at Attachment 2, Articles of Incorporation.

church services, or any other public gatherings by providing speakers and other instructional and educational programs which may be deemed necessary in effecting the above purposes.”<sup>21</sup> This satisfies the Commission’s NCE requirements and CCAC has thus established its NCE qualifications.

*Site Availability.* Farms also argues that CCAC lacked reasonable assurance of site availability. An applicant seeking a new broadcast facility must, in good faith, possess “reasonable assurance” of a transmitter site at the time it files its application.<sup>22</sup> It is well established that the specification of a transmitter site in an application is an implied representation that the applicant has obtained reasonable assurance that the site will be available.<sup>23</sup> While some latitude is afforded such “reasonable assurance,” there must be, at a minimum, a “meeting of the minds resulting in some firm understanding as to the site’s availability.”<sup>24</sup> A mere possibility that the site will be available is not sufficient.<sup>25</sup> The Commission assumes that applicants will be able to obtain local zoning and generally has not required applicants to obtain, or apply for, advance zoning approval to certify reasonable assurance of site availability.<sup>26</sup> Petitioners can rebut this assumption by showing that zoning approval already has been, or likely would be, denied by local land use authorities.<sup>27</sup> However, an appraisal from local land use official is not sufficient to establish that a proposed site is unavailable due to zoning restrictions<sup>28</sup>.

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<sup>21</sup> CCAC Application at Attachment 14, Bylaws.

<sup>22</sup> *Les Seraphim and Mana’o Radio*, Memorandum Opinion and Order, 25 FCC Rcd 2785, 2787 (MB 2010).

<sup>23</sup> See, e.g., *William F. Wallace and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d 1424, 1427 (1974) (“*Wallace*”) (“Some indication by the property owner that he is favorably disposed toward making an arrangement is necessary.”).

<sup>24</sup> *Genesee Communications, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 3595 (1988). The applicant need not own the proposed site and may even work out the final details for a lease sometime in the future. The “reasonable assurance” standard is satisfied by “[s]ome clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated . . .”. *Elijah Broadcasting Corp.*, Memorandum Opinion and Order, 5 FCC Rcd 5350, 5351 (1990).

<sup>25</sup> See *Wallace*, 49 FCC 2d at 1425. The Commission does not require (and has never required) NCE broadcast applicants to certify the availability of the transmitter site in its application procedures. See, e.g., *Carnegie-Mellon Student Government Corp.*, Hearing Designation Order, 7 FCC Rcd 3914, 3914 (MB 1992). Nonetheless, when an NCE applicant proposes a site, it must do so with reasonable assurance in good faith that the site will be available. See, e.g., *Midland Educational Broadcasting Foundation*, Hearing Designation Order, 4 FCC Rcd 5207 (MB 1989) (holding that applicant for an NCE FM station had reasonable assurance of site availability because it paid for a lease option on transmitter site). Cf. *Alabama Citizens for Responsive Public Television, Inc.*, Memorandum Opinion and Order, 62 FCC 2d 755 (Rev. Bd. 1977) (NCE television broadcast application designated for hearing on issue of whether applicant had reasonable assurance of the site proposed in its application).

<sup>26</sup> See, e.g., *Artichoke Broadcasting Corporation*, Memorandum Opinion and Order, 10 FCC Rcd 12631, 12633 (1995) (noting that the Commission believes zoning matters are within the province of, and best resolved by, local land use authorities).

<sup>27</sup> *Id.*, citing, *inter alia*, *Teton Broadcasting Limited Partnership*, Memorandum Opinion and Order, 1 FCC Rcd 518 (1986) (site availability issue designated where petitioner demonstrated local zoning board had previously refused to approve proposed site for a transmitter, board’s composition had not changed, and board’s chairman had provided affidavit stating that board would not reverse its decision); *El Camino Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC 2d 361 (1968) (site availability issue designated where petitioner demonstrated it had filed with local land use authority a proposal similar to that specified by other applicant, and authority had rejected proposal). See also *WCAR, Inc.*, Memorandum Opinion and Order, 60 FCC 2d 825, 827-28 (1976) (“*WCAR*”) (“What is required to rebut the assumption of an applicant’s reasonable expectancy of obtaining the necessary zoning approval is evidence that such attempts to secure approval have been unsuccessful.”).

<sup>28</sup> See *WCAR*, 60 FCC 2d 827-28.

CCAC's original application states that the "facility is proposed for a 25 meter tower"<sup>29</sup> and that "[b]ecause this proposal is for an existing tower, no excavation is anticipated."<sup>30</sup> Farms presents a declaration of Sean Krietich, who states that he visited the CCAC site and did not see the tower identified in the application.<sup>31</sup> CCAC argues in opposition that Farms incorrectly visited 19061 Circle View Drive, when the coordinate in fact refer to the property located at 19021 Circle View Drive.<sup>32</sup> CCAC also provides a letter from the property owner, Dutch Green ("Green"), dated February 18, 2010, in which he provided CCAC permission to use his property for CCAC's proposed antenna,<sup>33</sup> and a sworn declaration from Green, dated June 21, 2011, attesting to the same.<sup>34</sup> In his declaration, Green states, in part:

By letter dated February 18, 2010, I gave [CCAC] reasonable assurance that I would enter into good faith negotiations with CCAC for a lease of tower space on my property . . . There currently is no tower on the property. In my February 18, 2010, letter, I made a generic reference to "tower space," which I intended to encompass the antenna structure and space necessary for the installation of CCAC's antenna on my property. My understanding is that CCAC's antenna could reside on a building-mounted antenna structure appurtenance attached to the eaves of my residence . . .<sup>35</sup>

Additionally, CCAC amended its application on June 15, 2011, to "clarify the nature of the antenna structure"<sup>36</sup> and states that "[b]ecause this proposal is for an antenna structure which will be an appurtenance to an existing building, no new excavation is anticipated."<sup>37</sup>

In reply, Farms takes issue with the fact that CCAC's original application indicated that there was an existing tower, and argues that CCAC lacked site assurance because the tower did not in fact exist at the time CCAC obtained Green's permission to use the site.<sup>38</sup> Moreover, Farms argues that Green's declaration demonstrates that he was not aware that the antenna would be attached to his home at the time he gave CCAC permission to use his home, and that only now is he acquiescing to the idea of attaching CCAC's antenna to the residential structure.<sup>39</sup> Farms also argues that CCAC was prohibited from amending its application to clarify that the antenna would be constructed on top of an existing home.<sup>40</sup> Finally, Farms argues that the proposed tower cannot be built because of height restrictions in the

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<sup>29</sup> CCAC Application at Exhibit 1. *See also* CCAC Application at Section VII, Item 6 (stating that overall tower height above ground level is 25 meters).

<sup>30</sup> *Id.* at Exhibit 24.

<sup>31</sup> Farms-CCAC Petition at 1-2.

<sup>32</sup> Farms-CCAC Opposition at 2. The staff has determined that the coordinates listed in CCAC's application do in fact correspond to the property located at 19021 Circle View Drive.

<sup>33</sup> Farms-CCAC Opposition at Exhibit 1.

<sup>34</sup> Farms-CCAC Opposition at Exhibit 2.

<sup>35</sup> *Id.*

<sup>36</sup> CCAC Amended Application at Exhibit 1.

<sup>37</sup> CCAC Amended Application at Exhibit 24.

<sup>38</sup> Farms-CCAC Reply at 1-2.

<sup>39</sup> Farms-CCAC Reply at 3-4.

<sup>40</sup> Farms-CCAC Reply at 1-3.

subdivision where it is located.<sup>41</sup> Attached to the Reply is the another declaration by Sean Krietch, where he states that a planner at the County of Amador Planning Department informed him that the construction of the proposed antenna would not be permitted at the identified site because of local height restrictions.<sup>42</sup>

We find Farms' arguments unpersuasive. We disagree with Farm's strained reading of Green's declaration, and find that it establishes that that CCAC had reasonable assurance that it could use Green's property as a transmitter site at the time of application filing.<sup>43</sup> We further disagree with Farms' assertion that CCAC should be prohibited from amending its application. While it is true that applicants may not amend their applications where they had no reasonable site assurance to begin with,<sup>44</sup> CCAC did in fact have reasonable site assurance before it amended its application. CCAC's amended application merely clarifies that the antenna will be attached to an existing building.<sup>45</sup> Finally, we find Farm's zoning argument meritless because Farms does not present any evidence of past unsuccessful attempts by CCAC at securing zoning approval.<sup>46</sup> Therefore, Farms has not adequately demonstrated that CCAC lacks reasonable assurance that the proposed site may be used for constructing the tower.

CCAC's Petitions to Deny the Farms, SHSDA, and SSHF Applications. Site Assurance Issues. CCAC argues that Farms, SHSDA, and SSHF all lacked reasonable assurance of site availability. Farms, SHSDA, and SSHF all proposed a transmitter site on the same tower located at Cedar Hills ECO Farm in Pioneer, California. CCAC states that its private investigator, Tim Murphy ("Murphy"), travelled to that property and met with John Van Diepen ("Van Diepen"), the property owner. CCAC further states that Van Diepen informed Murphy that he did not want to rent out the tower and that he had never signed a letter stating that he would do so.<sup>47</sup>

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<sup>41</sup> Farms-CCAC Reply at 4-5. Specifically, Farms argues that Green's statement that "my understanding is" as opposed to "was" indicates that CCAC and Green did not originally propose to build the antenna attached to Green's residence.

<sup>42</sup> Farms-CCAC Reply at 4-5, Attachment 1.

<sup>43</sup> See, e.g., *National Innovative Programming Network, Inc. of the East Coast*, Memorandum Opinion and Order, 2 FCC Rcd 5641, 5642 (1987) (all that is ordinarily necessary for reasonable assurance is some clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated, and that he would give notice of any change of intention; reasonable assurance may be acquired by informal telephone contacts by the applicant's agent); *Texas Prophecy Media Group, LLC*, Letter, 24 FCC Rcd 13607 (MB 2009) (finding applicant had reasonable assurance of site availability on which to construct a new tower).

<sup>44</sup> *Edward A. Schober*, Memorandum Opinion and Order, 23 FCC Rcd 14263, 14265 (2008) ("The Commission, however, has repeatedly held that 'an applicant will not be permitted to amend where it did not have the requisite reasonable assurance to begin with . . .'"). See also *Indiana Community Radio Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 10963 (MB 2008) (same).

<sup>45</sup> CCAC Amended Application at Exhibit 24.

<sup>46</sup> See *WCAR*, 60 FCC 2d at 827-28.

<sup>47</sup> CCAC-Farms Petition at 2; CCAC-SHSDA Petition at 2; CCAC-SSHF Petition at 2. A Declaration of Tim Murphy is attached to each petition.

We are unpersuaded by CCAC's arguments. Murphy's declaration contains hearsay,<sup>48</sup> and its veracity is questionable since Murphy is an agent of the petitioner, CCAC.<sup>49</sup> Moreover, both SHSDA and Farms have produced letters from Van Diepen, signed in February 2010, in which he states that he owns the tower in question and is willing to discuss renting tower space to them.<sup>50</sup> This directly contradicts Murphy's declaration and is sufficient to establish that Farms and SHSDA had reasonable assurance of site availability.<sup>51</sup> Moreover, although SSHF has not filed an opposition refuting CCAC's claim that it lacked reasonable assurance of site availability, we find Murphy's declaration cannot be accorded any weight. We therefore deny CCAC's petitions against the SHSDA Application, the Farms Application, and the SSHF Application.

*Point System Claims.* Farms argues that SHSDA is not entitled to points for diversity of ownership because it failed to provide a copy of its governing documents, and maintains that the statement provided in SHSDA's exhibit, without context, fails to adequately support its claim of diversity points.<sup>52</sup> SHSDA's exhibit explains that the church has no governing documents, such as articles of incorporation or bylaws, and that the actions of the church board serve as its governing documents.<sup>53</sup> The church board adopted a policy in support of its claim for comparative points for diversity of ownership, which states:

[T]he local Seventh-Day Adventist Church has no governing documents similar to articles of incorporation, a constitution or bylaws. Consequently, local policy and governance are implemented by the church board. Actions of the church board serve as governing documents for the church. In support of the church's claim to comparative points, the church board has adopted the following policies . . . 2) At no times shall the church hold an attributable interest in another radio station, or construction permit for a radio station, if the principal community contour of such station would overlap, in whole or in part, the principal community contour of the radio station that will result from the application. These policies are adopted for the purpose of complying with the FCC's comparative selection procedures for noncommercial broadcast applications as set forth in Sections 73.7000 and 73.7003 of the FCC's Rules (47 CFR 73.7000 and 73.7003).<sup>54</sup>

SHSDA argues that the Commission has accepted similar statements in the past, and credited applicants even if they failed to provide a complete set of bylaws or other governing documents.<sup>55</sup> Farms

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<sup>48</sup> The Commission has found accounts of conversations with third parties to be inadmissible hearsay. *See, e.g., Living Proof, Inc. Big Pine, California*, Letter, 24 FCC Rcd 2382, 2385, n.29 (MB 2009) (declining to credit hearsay statements of third party). The weight to be accorded to a hearsay statement depends on its truthfulness, reasonableness, and credibility (*Johnson v. United States*, 628 F.2d 187, 190-191 (D.C. Cir. 1980)).

<sup>49</sup> *See, e.g., Iglesia Jesucristo Es Mi Refugio, Inc.*, Memorandum Opinion Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 16310, 16319 (MB 2010) (petitioner's engineering consultant's hearsay statement, uncorroborated by independent documentation, should be given little weight because he was not a disinterested witness); *Second Samoan Congregation Church*, Letter, 23 FCC Rcd 16630, 16636 (MB 2008) (applicant's counsel's statements should be given little weight because he is not a disinterested witness).

<sup>50</sup> CCAC-Farms Opposition at Letter of John Van Diepen; CCAC-SHSDA Opposition at Exhibit A.

<sup>51</sup> *See supra* note 46.

<sup>52</sup> Farms-SHSDA Petition at 3.

<sup>53</sup> SHSDA Application at Exhibit 1.

<sup>54</sup> *Id.*

<sup>55</sup> SHSDA Opposition at 6-7, *citing Alaska Federation for Community Self Reliance* (File No. BNPED-20071018AVG); *Crested Butte Mountain Education Radio, Inc.* (File No. BNPED-20071019AHW); *Southwest*

replies that in the instances cited by SHSDA, the applicant had provided some physical documentation to support its claim for diversity of ownership points, such as a copy of the board resolution, and not merely entered a statement as an exhibit to the application.<sup>56</sup>

In order to be awarded two points for local diversity of ownership, an NCE applicant must certify that it has no attributable interests in any other broadcast station or authorized construction permit whose principal community contour overlaps that of the proposed station. The applicant must demonstrate that its governing documents require that such diversity be maintained.<sup>57</sup>

During the rulemaking proceeding leading to the adoption of Section 73.7003 of the Rules, the Commission considered how an organization without traditional governing documents, such as SHSDA, would be able to meet the governing documents requirement.<sup>58</sup> The Commission determined that in the limited case of state entities whose governing documents cannot be amended without legislative action, it would permit such applicants to certify their commitment to maintain the board characteristics on which it bases its diversity claim.<sup>59</sup> Although the Commission did not make a similar accommodation for applicant entities that do not use traditional corporate governance documents, we are concerned that an unreasonably strict approach would have the effect of penalizing applicant entities, such as SHSDA here, which do not maintain formal corporate governance documents but clearly are attempting to satisfy our concerns for maintaining board characteristics for which an applicant receives comparative credits.<sup>60</sup>

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*Project for Community Education* (File No. BNPED-20071015ABU); *Common Ground Athens, Inc.* (File No. BNPED-20071022AQA); *Inter Mirificia, Inc.* (File No. BNPED-20071022BHU); *Horizon Christian Fellowship of Indianapolis* (File No. BNPED-20071017ABZ); *Summit Seekers, Inc.* (File No. BNPED-20071022AXE); *Harvest Chapel, Inc.* (File No. BNPED-20071022BJS); *Crisis Pregnancy Help Center of Slidell* (File No. BNPED-20071016ABC).

<sup>56</sup> Farms-SHSDA Reply at 4-7.

<sup>57</sup> Section 73.7003 (b)(2) states, in relevant part:

Local diversity of ownership. Two points for applicants with no attributable interests as defined in § 73.7000, in any other broadcast station or authorized construction permit (comparing radio to radio and television to television) whose principal community (city grade) contour overlaps that of the proposed station, if the applicant's own governing documents (e.g. by-laws, constitution, or their equivalent) require that such diversity be maintained.

Section 73.7000 defines “attributable interest” as:

An interest of an applicant, its parent, subsidiaries, their officers, and members of their governing boards that would be cognizable under the standards in the notes to § 73.3555. Also an interest of an entity providing more than 33 percent of an applicant's equity and/or debt that also either (1) supplies more than 15% of the station's weekly programming, or (2) has an attributable interest pursuant to § 73.3555 in media in the same market.

<sup>58</sup> See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Memorandum Opinion and Order, 16 FCC Rcd 5074, 5094 (2001), *reversed in part on other grounds*, *NPR v. FCC*, 254 F.3d 226 (D.C. Cir. 2001).

<sup>59</sup> *Id.* at 5095 (“We specifically limit the availability of this option to entities whose governing documents cannot be amended without legislative action.”).

<sup>60</sup> In an unpublished decision, the Bureau found that a similar policy statement was not sufficient to satisfy the requirements for diversity of ownership documentation. See *Northwest Communities Education Center*, Letter, Ref 1800B3-ATS (MB rel. Aug. 26, 2011), *rev'd on other grounds*, Letter, 27 FCC Rcd 6081 (MB 2012). However, unpublished decisions are neither binding nor precedent. See 47 C.F.R. § 0.445(e).



Accordingly, we will consider alternate safeguards from such organizations. We find that a statement from the applicant's governing board is sufficient to satisfy our documentation standard.<sup>61</sup>

Moreover, although each instance cited by SHSDA refers to case where applicants in fact provided a physical documentation with their application, we nonetheless find that there is no relevant distinction between electronically "cutting and pasting" the relevant documentation as an exhibit and providing a physical copy as an attachment. Farms' failure to present any question about the validity of SHSDA's certification of its application as "true, complete, and correct" requires that we deny the Petition for failure to present a *prima facie* question about SHSDA's diversity of ownership certification.<sup>62</sup>

*Time Share Agreement.* By this letter, we announce the opening of the 90-day period for the tentatively selected applicants in Reserved Allotment Group 7 to negotiate a voluntary time-sharing agreement. Upon negotiation and submission of such an agreement, the referenced applications will be granted, conditioned upon each selectee's compliance with Section 73.7005 of the Commission's Rules.<sup>63</sup> Should the four applicants fail to file with the Commission an acceptable voluntary time-sharing agreement by December 24, 2012, we will designate the applications for evidentiary hearing on the sole issue of an appropriate time-sharing arrangement, as directed by the Commission.

**Conclusion.** Accordingly, IT IS ORDERED, that the June 2, 2011, Petition to Deny the application of Calvary Chapel of Amador County, Inc., filed by Farms of Amador, IS DENIED.

IT IS FURTHER ORDERED THAT the June 2, 2011, Petition to Deny the application of Sutter Hill Seventh-Day Adventist Church (File No. BNPED-20100225ADX) filed by Farms of Amador IS DENIED.

IT IS FURTHER ORDERED THAT the June 2, 2011, Petition to Deny the application of Farms of Amador (File No. BNPED-20100224ACJ) filed by Calvary Chapel of Amador County, Inc, IS DENIED.

IT IS FURTHER ORDERED THAT the June 2, 2011, Petition to Deny the application of Sutter Hill Seventh-Day Adventist Church (File No. BNPED-20100225ADX) filed by Calvary Chapel of Amador County, Inc, IS DENIED.

IT IS FURTHER ORDERED THAT the June 2, 2011, Petition to Deny the application of Sonora Sierra Heritage Foundation (File No. BNPED-20100226AJU) filed by Calvary Chapel of Amador County, Inc, IS DENIED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>61</sup> See, e.g., *Southwest Georgia Project for Community Education*, Letter, 26 FCC Rcd 6020, 6026 (MB 2011) (board resolution sufficient to support claim for localism and diversity of ownership points).

<sup>62</sup> See Application, Section VI.

<sup>63</sup> 47 C.F.R. § 73.7005.

cc: Farms of Amador  
Calvary Chapel of Amador County, Inc.  
Sutter Hill Seventh-Day Adventist Church