

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

In the Matter of)	
)	
Threshold Fair Distribution Analysis of 16 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations)	NCE FM 2021 Window, MX Group Numbers 8A, 9, 15, 23, 24, 38, 39, 40, 57, 69, 78, 130, 135, 176, 204, and 224
)	

MEMORANDUM OPINION AND ORDER

Adopted: April 4, 2022

Released: April 4, 2022

By the Chief, Audio Division, Media Bureau

I. BACKGROUND

1. The Media Bureau (Bureau) has before it for comparative consideration 16 groups of mutually exclusive (MX) applications for new noncommercial educational (NCE) FM station construction permits.¹ By this Memorandum Opinion and Order (Order), the Bureau performs threshold fair distribution of service 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 in November 2021, during the filing window for new NCE FM applications.³ These applicants have had an opportunity to settle among themselves,⁴ and are now subject to a simplified, comparative process codified in Part 73, Subpart K, of the Commission's rules.⁵ During the first step of this process, the Bureau, acting pursuant to delegated authority,⁶ uses service area population data, Tribal Priority criteria, and certifications

¹ On November 29, 2021, the Bureau issued a public notice identifying 231 groups of mutually exclusive NCE FM applications. *See Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations*, MB Docket No. 20-343, Public Notice, DA 21-1476 (MB rel. Nov. 29, 2021) (*NCE MX Public Notice*). Each of the groups analyzed herein was included on the *NCE MX Public Notice*. The Bureau continues to analyze and process the remaining NCE MX groups and will release additional Orders, identifying the tentative selectees, as soon as the analyses are complete.

² *See* 47 CFR § 73.7004(b).

³ *See Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB rel. April 21, 2021). The window was available for FM reserved band (channels 201-220) proposals. *See* 47 CFR § 73.501.

⁴ *See NCE MX Public Notice* at 2-5.

⁵ 47 CFR §§ 73.7000 – 7005.

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 CFR §§ 0.61 and 0.283.

provided by the applicants to perform a threshold fair distribution analysis.

II. THRESHOLD FAIR DISTRIBUTION OF SERVICE PROCEDURES

3. Section 307(b) of the Communications Act of 1934, as amended (Section 307(b)) states that the Commission must “provide a fair, efficient, and equitable distribution” of broadcast service among the states and communities.⁷ In accordance with this directive, the Commission considers the fair distribution of service as a first, or threshold, issue in its NCE FM comparative review process.⁸ Accordingly, when applicants in a mutually exclusive NCE FM group⁹ propose to serve different communities, the Bureau first performs a threshold “fair distribution” analysis to ascertain whether grant of any of the applications would best further the Section 307(b) objective.¹⁰ In the first step of the Section 307(b), or fair distribution, analysis, the Bureau determines whether any of the applicants in the MX group is a federally recognized Native American Tribe or Alaska Native Village proposing to serve Tribal Lands¹¹ and claims the Tribal Priority.¹²

4. If there is no Tribal Applicant in the MX group,¹³ the Bureau proceeds to the second step in the Section 307(b) analysis and determines whether any applicant would provide a first or second reserved band channel NCE aural service to a substantial population (the First or Second NCE Service Preference) and compares population coverage totals.¹⁴ Specifically, during this step, an NCE FM applicant is eligible to receive a fair distribution preference (or Section 307(b) preference)¹⁵ if it would

⁷ 47 U.S.C. § 307(b).

⁸ See 47 CFR § 73.7002; *Reexamination of Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7396 (2000) (*NCE Order*) (concluding that “fair distribution of stations to communities should remain a threshold issue”), Memorandum Opinion and Order, 16 FCC Rcd 5074, 5077 (2001) (*NCE MO&O*) (“when competing FM applications propose to serve different communities, a proposal would be considered best, as a threshold matter, if it would provide service to a significant unserved or underserved population”).

⁹ Conflicting NCE FM applications, which cannot all be granted consistent with the Commission's technical rules, are considered mutually exclusive. An MX group consists of all applications which are MX to at least one other application in the group.

¹⁰ 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 CFR § 73.7002(a). Applicants’ Form 2100, Schedule 340, Fair Distribution of Service certifications enable the Bureau to consider whether service to one community over the other would best achieve the Commission’s directive to distribute radio service fairly among communities.

¹¹ See 47 CFR §§ 73.7000, 73.7002(b).

¹² An NCE FM applicant is eligible to receive a fair distribution preference, and ultimately be awarded the construction permit, if it identifies itself as a Tribal Applicant, proposes Tribal Coverage, and proposes the first reserved channel NCE service owned by any Tribal Applicant at a community of license located on Tribal Lands (the Tribal Priority). See 47 CFR § 73.7000 (defining a “Tribal Applicant” and “Tribal Coverage”); see also 47 CFR § 73.7002(b); *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, First Report and Order, 25 FCC Rcd 1583 (2010) (establishing the Section 307(b) Tribal Priority).

¹³ None of the MX groups addressed in this Order contain a Tribal Applicant. Accordingly, the first step of the Section 307(b) analysis, the Tribal Priority analysis, is unnecessary herein.

¹⁴ See 47 CFR § 73.7002(b).

provide a first or second reserved band channel NCE aural service to at least 10% of the population (in the aggregate), within the proposed station's service area, provided that the population served is at least 2,000 people. If only one applicant in an MX group qualifies for the First or Second NCE Service Preference, its "fair distribution" (Section 307(b)) preference is dispositive,¹⁶ and the applicant will be awarded the construction permit.

5. If more than one applicant in the MX group claims a First or Second NCE Service Preference, the applicant proposing to provide the greatest number of people with the highest level of service will be awarded a construction permit, if it will provide such service to at least 10% of the people within the station's 60 dBu contour *and* to at least 5,000 more people than the next best applicant.¹⁷ First service will be preferred over second service.¹⁸ Accordingly, the Bureau first examines the applicants' first service levels alone to determine whether one of the proposals is superior and should receive a decisive preference. If such applicants are equivalent with respect to first service, or no applicant qualifies for a first service preference, the Bureau considers combined first and second NCE aural service population totals. At each stage of the Section 307(b) analysis, any applicant that is comparatively disfavored in terms of Section 307(b) eligibility or service totals is eliminated. The process ends when the Bureau determines that one applicant is entitled to a Section 307(b) preference, or that either (1) none of the remaining applicants can be selected or eliminated based on a Section 307(b) preference, or (2) each remaining applicant proposes to serve the same community. Any remaining MX applicants proposing equivalent service overall, or proposing the same community, proceed to a point system analysis.¹⁹

6. Each applicant claiming a First or Second NCE Service preference 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.²⁰ Further, any applicant which receives a decisive Section 307(b) preference is 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.²¹

¹⁵ The terms "fair distribution preference" and "Section 307(b) preference" are used interchangeably to refer to the preference given to an MX application that is deemed to substantially further the fair distribution of service goals enunciated in Section 307(b) of the Act.

¹⁶ As noted, in the case of an MX group with a Tribal Applicant, an applicant qualifying for a Tribal Priority, however, will prevail over any MX applicant claiming a First or Second NCE Service Preference.

¹⁷ 47 CFR § 73.7002(b).

¹⁸ *Id.*

¹⁹ See 47 CFR §73.7003 (point system selection procedures).

²⁰ See *id.* § 73.7002(b). Applicants were required to use the most recently available, *i.e.*, 2010 Census, population data. See *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window*, DA 21-885, at 5-7 and n.24 (MB rel. July 23, 2021) (*NCE Filing Procedures Public Notice*); FCC Form 2100, Schedule 340, Instructions for Fair Distribution of Service at 12-14. 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 CFR § 73.7003(e) and (f)(3); *NCE Filing Procedures Public Notice* at 11; *NCE MO&O*, 16 FCC Rcd at 5082-83. 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 CFR §§ 1.65 and 73.7003(e).

²¹ See 47 CFR § 73.7005(b); see also 47 CFR § 73.7002(c). During this period, such applicant may make minor modifications to its authorized facilities, provided that "(i) the modification does not downgrade service to the area on which the preference was based, or (ii) any potential loss of first and second NCE service is offset by at least

III. GROUP-BY-GROUP ANALYSES

7. This Section contains narrative descriptions of our analyses, organized sequentially by group number. Unless otherwise noted, each component of the analysis is based on information provided by each of the respective applicants.²²

8. **Group 8A.**²³ This group consists of two applications to serve different communities in Alabama and Georgia. Faith Broadcasting, Inc. (FBI) proposes to serve Eufaula, Alabama. Eufaula Christian Radio (ECR) proposes to serve Cuthbert, Georgia. ECR asserts that it is eligible for a fair distribution preference based on first NCE service population totals.²⁴ FBI does not claim eligibility for a fair distribution preference. Accordingly, FBI is eliminated. ECR is the tentative selectee in Group 8A.

9. **Group 9.** This group consists of four applications to serve different communities in Alabama. Madison Street Baptist Church (MSBC) proposes to serve Athens; National Association for the Prevention of Starvation (NAPS) proposes to serve Elkmont; Truth Media, Inc. (TMI) proposes to serve Hillsboro; and Community Information and Education Radio, Inc. (CIER) proposes to serve Moulton. NAPS asserts that it is eligible for a fair distribution preference based on second NCE service population totals.²⁵ The other applicants do not claim eligibility for a fair distribution preference. Accordingly, MSBC, TMI, and CIER are each eliminated. NAPS is the tentative selectee in Group 9.

10. **Group 15.** This group consists of four applications to serve different communities in Arkansas. Full Potential Ministry (FPM) proposes to serve Dover; Radio by Grace, Inc. (RBG) proposes to serve Hot Springs; His Will, Inc. (HWI) proposes to serve Norman; and Calvary Chapel Pearl Harbor (CCPH) proposes to serve Russellville. FPM asserts that it is eligible for a fair distribution preference based on first NCE service population totals.²⁶ None of the other applicants claim eligibility for a first NCE service fair distribution preference. Accordingly, RBG, HWI, and CCPH are each eliminated. FPM is the tentative selectee in Group 15.

11. **Group 23.** This group consists of five applications to serve different communities in Arizona. Hispanic American Christian Network, Inc. (HACN) proposes to serve Aguila; Bradshaw Mountain Broadcasting, Inc. (BMB) proposes to serve Crown King; Advance Ministries, Inc. (AMI)

equal first and, separately, combined first and second NCE service population gain(s), and the applicant would continue to qualify for a decisive Section 307(b) preference.”). *Id.*

²² See FCC Form 2100, Schedule 340, Noncommercial Educational Station for Reserved Channel Construction Permit Application, Fair Distribution of Service certifications. An applicant responding “Yes” to any of the certification questions was required to submit an attachment with a justification for its certification.

²³ Group 8, which originally contained four applications, was bifurcated as a result of a technical amendment. The remaining two applications in the MX group will be evaluated as Group 8B in a subsequent order.

²⁴ See File No. 167321, Fair Distribution of Service Section, and associated exhibits. ECR’s 60 dBu contour encompasses 14,086 people, and its claimed first NCE service is 6,508 people. Thus, ECR would provide first NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

²⁵ See File No. 167679, Fair Distribution of Service Section, and associated exhibits. NAPS claims in an amendment, which decreases its overall population and second NCE service totals, that its 60 dBu contour encompasses 32,940 people, and its claimed aggregated first and second NCE service is 3,712 people (all second service). Thus, NAPS would provide second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

²⁶ See File No. 167774, Fair Distribution of Service Section, and associated exhibits. FPM’s 60 dBu contour encompasses 109,437 people, and its claimed first NCE service is 15,999 people. Thus, FPM would provide first NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

proposes to serve Prescott; Desert Soul Media, Inc. (DSM) proposes to serve Wickenburg; and Cheyenne Broadcasting Foundation, Inc. (CBFI) proposes to serve Wilhoit. CBFI asserts that it is eligible for a fair distribution preference based on first NCE service population totals.²⁷ None of the other applicants claim eligibility for a first NCE service fair distribution preference. Accordingly, HACN, BMB, AMI, and DSM are each eliminated. CBFI is the tentative selectee in Group 23.

12. **Group 24.** This group consists of five applications to serve different communities in Arizona. Ondas de Vida, Inc. (ODVI) proposes to serve Dewey-Humboldt; Cedar Cove Broadcasting, Inc. (CCBI) proposes to serve Groom Creek; Cosanti Foundation (CF) proposes to serve Mayer; and Advance Ministries, Inc. (AMI) and International Scripture Ministries, Inc. (ISMI) each proposes to serve Prescott. ODVI is the only applicant to claim eligibility for a fair distribution preference.²⁸ Therefore, CCBI, CF, AMI, and ISMI are each eliminated. ODVI is the tentative selectee in Group 24.

13. **Group 38.** This group consists of five applications to serve different communities in California and Nevada. In California, Cedar Broadcasting, Inc. (CB) proposes to serve Baker; Teleamerica Communications West Palm Beach Corp. (TCWPBC) proposes to serve Barstow; and Ondas de Vida, Inc. (ODVI) proposes to serve Silver Lakes. In Nevada, Las Vegas Public Radio Inc. (LVPR) and Remante Broadcasting Network (RBN) each proposes to serve Indian Springs. ODVI asserts that it is eligible for a fair distribution preference.²⁹ CB, TCWPBC, LVPR, and RBN do not, and are therefore each eliminated. ODVI is the tentative selectee for Group 38.

14. **Group 39.** This group consists of five applications to serve different communities in California. Remante Broadcasting Network (RBN) proposes to serve Firebaugh; Teleamerica Communications West Palm Beach Corp. (TCWPBC), Modesto Independent Media (MIM), and the Association for Community Education, Inc. (ACE) each proposes to serve Los Banos; and Radio Vision (RV) proposes to serve Three Rocks. RBN, MIM, and ACE each asserts that it is eligible for a fair distribution preference based on first NCE service.³⁰ TCWPBC and RV do not and are therefore each eliminated. RBN claims that it will provide first NCE service to 17,332 people; MIM to 48,715 people; and ACE to 38,432 people. MIM would provide a first NCE service to at least 5,000 more people than both RBN and ACE. Accordingly, MIM is the tentative selectee for Group 39.

15. **Group 40.** This group consists of four applications to serve different communities in California. Advance Ministries, Inc. (AMI) and La Nueva Broadcasting, Inc. (LNBI) both propose to serve Joshua Tree while Remante Broadcasting Network (RBN) and Calvary Chapel Pearl Harbor (CCPH) both propose to serve Twentynine Palms. LNBI and RBN are the only two applicants to claim eligibility for a fair distribution preference.³¹ Therefore, AMI and CCPH are each eliminated. LNBI

²⁷ See File No. 167326, Fair Distribution of Service Section, and associated exhibits. CBFI's 60 dBu contour encompasses 21,234 people, and its claimed first NCE service is 2,582 people. Thus, CBFI would provide first NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

²⁸ See File No. 167244, Fair Distribution of Service Section, and associated exhibits. ODVI claims that it would provide aggregated new first or second NCE service to 17,788 people (305 first service plus 17,483 second service) of the 127,569 people within its 60 dBu contour. Accordingly, ODVI would provide a new first or second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

²⁹ See File No. 167242, Fair Distribution of Service Section, and associated exhibit. ODVI's 60 dBu contour encompasses 70,235 people. ODVI's claimed first NCE service is 9,028 people. Thus, ODVI would provide a first NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

³⁰ See File Nos. 167143, 167222, and 167017, Fair Distribution of Service Section, and associated exhibits. RBN claims that it would provide first NCE service to 17,332 of the 17,467 people within its proposed 60 dBu contour; MIM to 48,715 of the 48,715 people; and ACE to 38,432 of the 38,432 people within its proposed 60 dBu contour. Thus, each applicant would provide first NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

claims it would provide a combined new first or second NCE service to 37,214 people (12 first service and 37,202 second service). RBN claims that it would provide an aggregated new first or second NCE service to 28,527 people (35 first service and 28,492 second service). Because LNBI would provide a combined first or second NCE service to at least 5,000 more people than RBN, LNBI is the tentative selectee in Group 40

16. **Group 57.** This group consists of five applications to serve different communities in Florida. Ethree Group, Inc. (Ethree) proposes to serve Cypress Quarters. Northeast Gospel Broadcasting Inc. (NGB) proposes to serve Ft Pierce. World Federation of Pastors and Ministers of the Full Gospel, Inc. (World Federation), Indian River State College (IRSC), and Montgomery Broadcasting, Inc. (Montgomery) all propose to serve Okeechobee. Ethree, IRSC, and Montgomery each claims eligibility for a fair distribution of service preference.³² NGB and World Federation do not and are therefore each eliminated. Ethree claims that it would provide a first NCE service to 44,152 people; IRSC to 5,920 people; and Montgomery to 4,758 people. Because Ethree would provide a first NCE service to at least 5,000 more people than IRSC and Montgomery, Ethree is the tentative selectee for Group 57.

17. **Group 69.** This group consists of five applications to serve different communities in Georgia. Legacy Broadcasting (Legacy) proposes to serve Blairsville; Community Public Radio, Inc. (Community) proposes to serve Commerce; Restored Together Radio, Inc. (Restored) proposes to serve Homer; World Federation of Pastors and Ministers of the Full Gospel, Inc. (World Federation) proposes to serve Lula; and the Blue Mantle Educational Association (Blue Mantle) proposes to serve Maysville. Legacy claims that it is eligible for a fair distribution preference based on its first NCE service population total.³³ The other applicants do not. Therefore, Community, Restored, World Federation, and Blue Mantle are eliminated. Legacy is the tentative selectee for Group 69.

18. **Group 78.** This group consists of four applications to serve different communities in Iowa and Minnesota. St. Gabriel Communications (SGC) proposes to serve Spencer, Iowa. In Minnesota, Fairmont Area Catholic Radio (Fairmont) proposes to serve Fairmont; VCY America, Inc. (VCY) proposes to serve Sherburn; and We Have this Hope Christian Radio, Inc. (Hope) proposes to serve Windom. Fairmont claims that it is eligible for a fair distribution preference based on first NCE service population totals.³⁴ The other applicants do not. Accordingly, SGC, VCY, and Hope are each eliminated. Fairmont is the tentative selectee for Group 78.

19. **Group 130.** This group consists of four applications to serve different communities in

³¹ See File Nos. 166711 and 167137, Fair Distribution of Service Section, and associated exhibits. LNBI claims in its amendment, which decreases its overall population and second NCE service totals, that it would provide a combined first and second NCE service to 37,214 people of the 37,701 people within its 60 dBu contour. RBN claims that it would provide an aggregated first or second NCE service to 28,527 people of the 28,527 people within its 60 dBu contour. Accordingly, LNBI and RBN would each provide a new first or second NCE service to at least 10% of the population within its respective 60 dBu contour and to more than 2,000 people.

³² See File Nos. 166667, 165949, and 165531, Fair Distribution of Service Section, and associated exhibits. Ethree claims that it would provide first NCE service to 44,152 of the 45,671 people within its 60 dBu contour. IRSC claims that it would provide first NCE service to 5,920 of the 41,861 people within its 60 dBu contour. Montgomery claims that it would provide first NCE service to 4,758 of the 40,191 people within its 60 dBu contour. Thus, each applicant would provide a first NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

³³ See File No. 166691, Fair Distribution of Service Section, and associated exhibits. Legacy's claimed first NCE service is 7,187 people. Legacy's 60 dBu contour encompasses 8,787 people. Thus, Legacy would provide a first NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

³⁴ See File No. 167071, Fair Distribution of Service Section, and associated exhibits. Fairmont's 60 dBu contour encompasses 11,745 people. Fairmont's claimed first NCE service is 11,745 people. Thus, it would provide first NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

Mississippi. Community Service Broadcasting Foundation, Inc. (CSBF) and Open Sky Radio Corp. (OSRC) each proposes to serve Clarksdale; Full Potential Ministry (FPM) proposes to serve Coahoma; and Elijah Radio (ER) proposes to serve Coffeerville. OSRC and FPM each asserts that it is eligible for a fair distribution preference.³⁵ CSBF and ER do not and are each eliminated. OSRC claims that it will provide a combined first and second NCE service to 18,718 people (0 first service and 18,718 second service); FPM to 26,425 people (0 first service and 26,425 second service). Because FPM's proposed second NCE service exceeds OSRC's by more than 5,000 people, FPM is the tentative selectee for Group 130.

20. **Group 135.** This group consists of three applications to serve different communities in North Carolina. Church Planters of America (CPA) proposes to serve Hoffman; La Ft. L Aumon (LFLA) proposes to serve Lumberton; and Pathway Christian Academy, Inc. (PCA) proposes to serve Rockingham. LFLA and PCA each claim eligibility for a fair distribution preference.³⁶ CPA does not and is eliminated. Only PCA asserts that it is eligible for a first NCE service preference. Specifically, PCA would provide a first NCE service to 51,764 people. Accordingly, PCA is entitled to a first NCE service preference and is the tentative selectee for Group 135.

21. **Group 176.** This group consists of five applications to serve different communities in Oklahoma. Saint Francis Xavier Church (SFXC) proposes to serve Carrier. The following four applicants propose to serve Enid: Community Broadcasting, Inc. (CBI), the West Hemlock Street Church of God (WHCG), Victory Bible Church, Inc. (VBCI), and Great Plains Christian Radio, Inc. (GPCR). SFXC asserts that it is eligible for a fair distribution preference based on second NCE service population totals.³⁷ The other applicants do not claim eligibility for a fair distribution preference. Accordingly, CBI, WHCG, VBCI, and GPCR are each eliminated. SFXC is the tentative selectee in Group 176.

22. **Group 204.** This group consists of five applications to serve different communities in Texas. San Antonio Christian Church (SACC) and Iglesia Biblica de Abilene (IBDA) each proposes to serve Abilene; Radio Inc. (RI) proposes to serve Ballinger; Centro Familiar de Restauracion y Vida (CFRV) proposes to serve Clyde; and Brazos Tv, Inc. (BTI) proposes to serve Hamlin. CFRV and BTI are the only applicants to claim eligibility for a fair distribution preference.³⁸ Therefore, SACC, IBDA, and RI are each eliminated. BTI is the only remaining applicant to claim a first NCE service preference. Accordingly, CFRV is eliminated, and BTI is the tentative selectee in Group 204.

³⁵ See File Nos. 166988 and 167883, Fair Distribution of Service Section, and associated exhibits. OSRC's 60 dBu contour encompasses 19,479 people. OSRC's claimed combined first and second NCE service is 18,718 people. FPM's 60 dBu contour encompasses 61,257 people. FPM's claimed combined first and second NCE service is 26,425 people. Thus, OSRC and FPM would each provide a combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

³⁶ See File Nos. 166376 and 167198. PCA's 60 dBu contour encompasses 107,051 people. PCA's claimed first NCE service is 51,764 people. Thus, PCA would provide a first NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people. LFLA provides only an attachment which lists the total service area, population of 75,807, and a map without a population breakdown to support its claim. Accordingly, we are unable to determine whether LFLA satisfies the 10% threshold and 2000-person minimum criteria.

³⁷ See File No. 167076, Fair Distribution of Service Section, and associated exhibits. SFXC's 60 dBu contour encompasses 8,596 people, and its claimed aggregated first and second NCE service is 6,453 people (684 first service and 5769 second service). Thus, SFXC would provide combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

³⁸ See File Nos. 167085 and 167142, Fair Distribution of Service Section, and associated exhibits. CFRV's 60 dBu contour encompasses 26,311 people, and its claimed aggregated first or second NCE service is 6,613 people (583 first service plus 6,030 second service). BTI's 60 dBu contour encompasses 42,589 people, and its claimed first and second NCE service is 13,042 people (12,575 first service plus 467 second service). CFRV and BTI would each provide a new first or second NCE service to at least 10% of the population within its respective 60 dBu contour and to more than 2,000 people.

23. **Group 224.** This group consists of five applications to serve different communities in West Virginia. Art26201, Inc. (AI) proposes to serve Buckhannon; West Virginia Educational Broadcasting Authority (WVEBA) proposes to serve Elkins; Araiza Revival Ministries, Inc (ARMI) proposes to serve Glenville; Ritchie Progress Alliance, Inc. (RPAI) proposes to serve Harrisville; and Light of Life Community Inc. (LLCI) proposes to serve Weston. ARMI and RPAI are the only applicants to claim eligibility for a fair distribution preference.³⁹ Therefore, AI, WVEBA, and LLCI are each eliminated. ARMI would provide a new second NCE service to 13,506 people while RPAI would provide a combined new first or second NCE service to 4,051 people (307 first service plus 3,744 second service). ARMI would provide a new second NCE service to at least 5,000 more people than RPAI. ARMI is, therefore, the tentative selectee in Group 224.

IV. ADDITIONAL MATTERS

24. **Acceptability Studies.** Once the Bureau identifies a tentative selectee pursuant to the fair distribution analysis, the next step is to consider whether the selectee's application has defects.⁴⁰ If the Bureau finds the application acceptable for filing, we announce acceptance by the release of this Order, and petitions to deny may be filed within 30 days following the release date of the Order.⁴¹

25. The Bureau has studied the applications of all of the tentative selectees identified herein and determined that each application is acceptable for filing. Each of the tentative selectees 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 each application would serve the public interest, convenience, and necessity. It is our intention to grant each application if, after the 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.

26. **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.

V. ORDERING CLAUSES

27. 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 appeals.⁴²

³⁹ See File Nos. 167780 and 166844, Fair Distribution of Service Section, and associated exhibits. ARMI claims to provide a new second NCE service to 13,506 of the 16,066 people within its 60 dBu contour. RPAI claims to provide an aggregated new first or second NCE service to 4,051 of the 15,460 people within its 60 dBu contour. Accordingly, ARMI and RPAI would each provide a new first or second NCE service to at least 10% of the population within its respective 60 dBu contour and to more than 2,000 people.

⁴⁰ 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, provided that the amendment is minor and does not alter the fair distribution analysis. See 47 CFR § 73.3522(b)(1). A tentative selectee that is unable to cure the defect is disqualified. 47 CFR § 73.7004(d).

⁴¹ 47 CFR § 73.7004.

⁴² See 5 U.S.C. §§ 702, 704, 706; 47 U.S.C. §§ 309(d), 402(b), 405; 47 CFR §§ 1.106-08, 1.120, 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).

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.

28. **Group 8A.** Accordingly, IT IS ORDERED, That the Application filed by Eufaula Christian Radio (File No. 167321) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Cuthbert, Georgia, 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 Faith Broadcasting, Inc. (File No. 167008), and TO GRANT the application of Eufaula Christian Radio (File No. 167321) CONDITIONED UPON that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

29. **Group 9.** Accordingly, IT IS ORDERED, That the Application filed by National Association for the Prevention of Starvation (File No. 167679) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Elkmont, Alabama, 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 Madison Street Baptist Church (File No. 167878), Truth Media, Inc. (File No. 166080), and Community Information and Education Radio, Inc. (File No. 166285), and TO GRANT the application of National Association for the Prevention of Starvation (File No. 167679) CONDITIONED UPON that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

30. **Group 15.** Accordingly, IT IS ORDERED, That the Application filed by Full Potential Ministry (File No. 167774) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Dover, Arkansas, 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 Radio by Grace, Inc. (File No. 167551), His Will, Inc. (File No. 166786), and Calvary Chapel Pearl Harbor (File No. 167416), and TO GRANT the application of Full Potential Ministry (File No. 167774) CONDITIONED UPON that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

31. **Group 23.** Accordingly, IT IS ORDERED, That the Application filed by Cheyenne Broadcasting Foundation, Inc. (File No. 167326) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Wilhoit, Arizona, 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 Hispanic American Christian Network, Inc. (File No. 167598), Bradshaw Mountain Broadcasting, Inc. (File No. 166211), Advance Ministries, Inc. (File No. 167543), and Desert Soul Media, Inc. (File No. 166533), and TO GRANT the application of Cheyenne Broadcasting Foundation, Inc. (File No. 167326) CONDITIONED UPON that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

32. **Group 24.** Accordingly, IT IS ORDERED, That the Application filed by Ondas de Vida, Inc. (File No. 167244) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE

FM station in Dewey-Humboldt, Arizona, 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 Cedar Cove Broadcasting, Inc. (File No. 167336), Cosanti Foundation (File No. 165807), Advance Ministries, Inc. (File No. 167546), and International Scripture Ministries, Inc. (File No. 167293), and TO GRANT the application of Ondas de Vida, Inc. (File No. 167244) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

33. **Group 38.** Accordingly, IT IS ORDERED, that the Application filed by Ondas de Vida, Inc. (File No. 167242) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Silver Lakes, 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 Cedar Broadcasting, Inc. (File No. 166108), Teleamerica Communications West Palm Beach Corp. (File No. 167475), Las Vegas Public Radio Inc. (File No. 166753), and Remante Broadcasting Network (File No. 167138), and TO GRANT the application of Ondas de Vida, Inc. (File No. 167242) CONDITIONED UPON that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

34. **Group 39.** Accordingly, IT IS ORDERED, that the Application filed by Modesto Independent Media (File No. 167222) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Los Banos, 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 Remante Broadcasting Network (File No. 167143), Teleamerica Communications West Palm Beach Corp. (File No. 167476), The Association for Community Education, Inc. (File No. 167017), and Radio Vision (File No. 167164), and TO GRANT the application of Modesto Independent Media (File No. 167222) CONDITIONED UPON that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

35. **Group 40.** Accordingly, IT IS ORDERED, That the Application filed by La Nueva Broadcasting, Inc. (File No. 166711) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Joshua Tree, 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 Advance Ministries, Inc. (File No. 167536), Remante Broadcasting Network (File No. 167137), and Calvary Chapel Pearl Harbor (File No. 167375), and TO GRANT the application of La Nueva Broadcasting, Inc. (File No. 166711) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

36. **Group 57.** Accordingly, IT IS ORDERED, That the Application filed by Ethree Group, Inc. (File No. 166667) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Cypress Quarters, Florida, 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 Northeast Gospel Broadcasting Inc. (File No. 167435), World Federation of Pastors and Ministers of the Full Gospel, Inc. (File No. 167415), Indian River State College (File No. 165949), and Montgomery

Broadcasting, Inc. (File No. 165531), and TO GRANT the application of Ethree Group, Inc. (File No. 166667) CONDITIONED UPON that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

37. **Group 69.** Accordingly, IT IS ORDERED, That the Application filed by Legacy Broadcasting (File No. 166691) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Blairsville, Georgia, 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 Community Public Radio, Inc. (File No. 166736), Restored Together Radio, Inc. (File No. 167587), World Federation of Pastors and Ministers of the Full Gospel, Inc. (File No. 167177), and the Blue Mantle Educational Association (File No. 167342), and TO GRANT the application of Legacy Broadcasting (File No. 166691) CONDITIONED UPON that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

38. **Group 78.** Accordingly, IT IS ORDERED, That the Application filed by Fairmont Area Catholic Radio (File No. 167071) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Fairmont, Minnesota, 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 St. Gabriel Communications (File No. 167515), VCY America, Inc. (File No. 167877), and We Have this Hope Christian Radio, Inc. (File No. 167166), and TO GRANT the application of Fairmont Area Catholic Radio (File No. 167071) CONDITIONED UPON that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

39. **Group 130.** Accordingly, IT IS ORDERED, that the Application filed by Full Potential Ministry (File No. 167883) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Coahoma, Mississippi, 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 Community Service Broadcasting Foundation, Inc. (File No. 167371), Open Sky Radio Corp. (File No. 166988), and Elijah Radio, (167031), and TO GRANT the application of Full Potential Ministry (File No. 167883) CONDITIONED UPON that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

40. **Group 135.** Accordingly, IT IS ORDERED, that the Application filed by Pathway Christian Academy, Inc. (File No. 166376) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Rockingham, North Carolina, 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 Church Planters of America (File No. 167765) and La Ft L Aumon (File No. 167198), and TO GRANT the application of Pathway Christian Academy, Inc. (File No. 166376) CONDITIONED UPON that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

41. **Group 176.** Accordingly, IT IS ORDERED, That the Application filed by Saint Francis Xavier Church (File No. 167076) is TENTATIVELY SELECTED to be awarded a construction permit

for a new NCE FM station in Carrier, Oklahoma, 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 Community Broadcasting, Inc. (File No. 166992), the West Hemlock Street Church of God (File No. 166097), Victory Bible Church, Inc. (File No. 166007), and Great Plains Christian Radio, Inc. (File No. 165944), and TO GRANT the application of Saint Francis Xavier Church (File No. 167076) CONDITIONED UPON that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

42. **Group 204.** Accordingly, IT IS ORDERED, That the Application filed by Brazos Tv, Inc. (File No. 167142) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Hamlin, Texas, 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 San Antonio Christian Church (File No. 167175), Iglesia Biblica de Abilene (File No. 166637), Radio Inc. (File No. 166341), and Centro Familiar de Restauracion y Vida (File No. 167085), and TO GRANT the application of Brazos Tv, Inc. (File No. 167142) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

43. **Group 224.** Accordingly, IT IS ORDERED, That the Application filed by Araiza Revival Ministries, Inc. (File No. 167780) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Glenville, West Virginia, 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 Art26201, Inc. (File No. 166169), West Virginia Educational Broadcasting Authority (File No. 167748), Ritchie Progress Alliance, Inc. (File No. 166844), and Light of Life Community Inc. (File No. 167264), and TO GRANT the application of Araiza Revival Ministries, Inc. (File No. 167780) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau