

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

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| In the Matter of   | ) |   |
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| <b>Threshold Fair Distribution Analysis of 13<br/>Groups of Mutually Exclusive Applications<br/>for Permits to Construct New Noncommercial<br/>Educational FM Stations</b> | ) | NCE FM 2021 Window, MX Group<br>Numbers 41A, 49A, 59B, 95, 96B, 97, 102A,<br>136A, 137A, 152, 157, 199, and 202 |
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**MEMORANDUM OPINION AND ORDER**

**Adopted: May 2, 2022**

**Released: May 2, 2022**

By the Chief, Audio Division, Media Bureau:

**I. BACKGROUND**

1. The Media Bureau (Bureau) has before it for comparative consideration 13 groups of mutually exclusive (MX) applications for new noncommercial educational (NCE) FM station construction permits.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> These applicants have had an opportunity to settle among themselves,<sup>4</sup> and are now subject to a simplified, comparative process codified in Part 73, Subpart K, of the Commission's rules.<sup>5</sup> During the first step of this process, the Bureau, acting pursuant to delegated authority,<sup>6</sup> uses service area population data, Tribal Priority criteria, and certifications

<sup>1</sup> 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.

<sup>2</sup> *See* 47 CFR § 73.7004(b).

<sup>3</sup> *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.

<sup>4</sup> *See NCE MX Public Notice* at 2-5.

<sup>5</sup> 47 CFR §§ 73.7000 – 7005.

<sup>6</sup> *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.<sup>7</sup> 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.<sup>8</sup> Accordingly, when applicants in a mutually exclusive NCE FM group<sup>9</sup> 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.<sup>10</sup> 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 Lands<sup>11</sup> and claims the Tribal Priority.<sup>12</sup>

4. If there is no Tribal Applicant in the MX group,<sup>13</sup> 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.<sup>14</sup> Specifically, during this step, an NCE FM applicant is eligible to receive a fair distribution preference (or Section 307(b) preference)<sup>15</sup> if it would

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<sup>7</sup> 47 U.S.C. § 307(b).

<sup>8</sup> 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”).

<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> See 47 CFR §§ 73.7000, 73.7002(b).

<sup>12</sup> 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).

<sup>13</sup> 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.

<sup>14</sup> 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,<sup>16</sup> 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.<sup>17</sup> First service will be preferred over second service.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup> 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.<sup>21</sup>

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<sup>15</sup> 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.

<sup>16</sup> 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.

<sup>17</sup> 47 CFR § 73.7002(b).

<sup>18</sup> *Id.*

<sup>19</sup> See 47 CFR §73.7003 (point system selection procedures).

<sup>20</sup> 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).

<sup>21</sup> 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

8. 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.<sup>22</sup>

9. **Group 41A.**<sup>23</sup> This group consists of two applications to serve different communities in California. Slab City Community Group, Inc. (SCCG) proposes to serve Bombay Beach. Remante Broadcasting Network (RBN) proposes to serve Salton City. SCCG claims that it is eligible for a fair distribution preference.<sup>24</sup> RBN does not claim a fair distribution preference. Therefore, RBN is eliminated, and SCCG is the tentative selectee for Group 41A.

10. **Group 49A.**<sup>25</sup> This group consists of seven applications to serve different communities in Delaware, Maryland, and New Jersey. Bible Broadcasting Network, Inc. (BBN) and Delaware First Media Corporation (DFMC) propose to serve Lewes, Delaware. DFMC separately proposes to serve Seaford, Delaware. In Maryland, Priority Radio, Inc. (Priority) proposes to serve Cambridge; Iglesia de Evangelization Misionera Jovenes Cristianos de Maryland, Inc. (Iglesia) proposes to serve Lexington Park; and Historic Oxford, Limited (Historic Oxford) proposes to serve Trappe. Finally, Maranatha Ministries/Joy Comm. (Maranatha) proposes to serve Cape May, New Jersey. Historic Oxford claims that it is eligible for a fair distribution preference based on first NCE service population totals.<sup>26</sup> The other applicants do not. Accordingly, BBN, DFMC (both proposals), Priority, Iglesia, and Maranatha are each eliminated. Historic Oxford is the tentative selectee for Group 49A.

11. **Group 59B.**<sup>27</sup> This group consists of eight applications to serve different communities in Florida and Georgia. In Florida, Faith and Action Community Outreach, Inc. (Faith) proposes to serve Madison; Big Bend Heritage Music Association, Inc. (Big Bend) proposes to serve Perry. In Georgia, Inverse Focus Ministry, Inc. (Inverse) proposes to serve Baconton; Elijah Radio (Elijah) proposes to serve Dasher; Georgia Public Telecommunications Commission (GPTC) proposes to serve Pelham; Church Planters of America (Church Planters) proposes to serve Quitman; and, CSN International (CSN) and Bemiss Road Baptist Church and Lowndes County Christian Academy Inc. (Bemiss) each proposes to

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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.*

<sup>22</sup> 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.

<sup>23</sup> Group 41, which originally contained six applications, was bifurcated as a result of a technical amendment. The remaining two applications in the MX group will be evaluated as Group 41B in a subsequent order.

<sup>24</sup> See File No. 167466, Fair Distribution of Service Section, and associated exhibits. SCCG’s 60 dBu contour encompasses 27,283 people. SCCG’s claimed first NCE service is 4,135 people, and its aggregated first and second NCE service is 18,813 people (4,135 first service plus 14,678 people). SCCG would, therefore, provide a first or second NCE service to at least 10% of the population within its proposed 60 dBu contour and to more than 2,000 people.

<sup>25</sup> Group 49, which originally contained 13 applications, was bifurcated as a result of a technical amendment. The remaining applications in the MX group will be evaluated as Group 49B in a subsequent order.

<sup>26</sup> See File No. 167290, Fair Distribution of Service Section, and associated exhibits. Historic Oxford’s 60 dBu contour encompasses 24,238 people. Historic Oxford’s claimed first NCE service is 2,988 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.

<sup>27</sup> Group 59, which originally contained 17 applications, was bifurcated as a result of a technical amendment. The remaining applications in the MX group will be evaluated as Group 59A in a subsequent order.

serve Valdosta. Inverse claims that it is eligible for a fair distribution of service preference based on first NCE service population totals.<sup>28</sup> The other applicants do not. Accordingly, Faith, Big Bend, Elijah, GPTC, Church Planters, CSN, and Bemiss are each eliminated. Inverse is the tentative selectee for Group 59B.

12. **Group 95.** This group consists of six applications to serve different communities in Indiana. Olivet Nazarene University (ONU) proposes to serve Bloomington; World Federation of Pastors and Ministers of the Full Gospel, Inc. (World Federation) proposes to serve Country Squire Lake; Lushomo Health Education Centre (Lushomo) and Appalachian Educational Communication Corporation (Appalachian) each proposes to serve Ellettsville; and Community Radio for Hoosiers Inc. (CRH) and New Beginnings Movement Inc. (New Beginnings) each proposes to serve Seymour. World Federation and New Beginnings claim that they are each eligible for a fair distribution of service preference based on second NCE service population totals.<sup>29</sup> The other applicants do not. Accordingly, ONU, Lushomo, Appalachian, and CRH are each eliminated. World Federation would provide a first or second NCE service to 6,293 people (1,475 first service and 4,818 second service); New Beginnings to 59,306 people (0 first service and 59,306 second service). Because New Beginnings would provide a first or second NCE service to at least 5,000 more people than World Federation, New Beginnings is the tentative selectee for Group 95.

13. **Group 96B.**<sup>30</sup> This group consists of five applications to serve different communities in Indiana. Fairhaven Baptist Church (FBC) and A Hand Up, Inc. (AHU) each proposes to serve Chesterton. World Federation of Pastors and Ministers of the Full Gospel, Inc. (WFPM) proposes to serve Knox; Olivet Nazarene University (ONU) proposes to serve Porter; and Classical Radio Novo, Inc. (CRN) proposes to serve Valparaiso. AHU asserts that it is eligible for a fair distribution preference based on second NCE service population totals.<sup>31</sup> The other applicants do not claim eligibility for a fair distribution preference. Accordingly, FBC, WFPM, ONU, and CRN are each eliminated. AHU is the tentative selectee in Group 96B.

14. **Group 97.** This group consists of twelve applications to serve different communities in Indiana. Side by Side, Inc. (SBS) proposes to serve Bunker Hill, and separately, Logansport and Peru; New Beginnings Movement Inc. (NBM) proposes to serve Frankfurt (NBM Frankfort), and separately, Tipton (NBM Tipton); Radio 74 Internationale (R74) proposes to serve Kokomo; Covenant Network (CN) proposes to serve Lafayette; Pensacola Christian College, Inc. (PCC) proposes to serve Logansport; Olivet Nazarene University (ONU) proposes to serve Mulberry; North Manchester Radio Group Corp. (NMRG) proposes to serve North Manchester; Incrp, Inc. (Incrp) proposes to serve Russiaville; and, finally, Faith Baptist Church (FBC) proposes to serve Wabash. PCC, NMRG, Incrp, NBM Tipton, and

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<sup>28</sup> See File No. 167493, Fair Distribution of Service Section, and associated exhibits. Inverse's 60 dBu contour encompasses 19,135 people. Inverse's claimed first NCE service is 2,060 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.

<sup>29</sup> See File Nos. 167179 and 167516, Fair Distribution of Service Section, and associated exhibits. World Federation's 60 dBu contour encompasses 61,471 people, and its claimed aggregated first and second NCE service is 6,293 people. New Beginnings' 60 dBu contour encompasses 59,306 people, and its claimed aggregated first and second NCE service is all 59,306 people. Thus, each would provide an aggregated first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>30</sup> Group 96, which originally contained 10 applications, was bifurcated as the result of a technical amendment. The remaining two applications in the MX group will be evaluated as Group 96A in a subsequent order.

<sup>31</sup> See File No. 167842, Fair Distribution of Service Section, and associated exhibits. AHU's 60 dBu contour encompasses 129,470 people, and its claimed aggregated first and second NCE service is 13,039 people (all second service). Thus, AHU 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.

FBC each asserts that it is eligible for a fair distribution preference.<sup>32</sup> SBS (all three proposals), NBM Frankfort, R74, CN, and ONU do not and are each eliminated. PCC, NMRG, Incrp, and FBC assert that they are each eligible for a first NCE service preference. NBM Tipton does not and is eliminated. PCC would provide a first NCE service to 20,627 people; NMRG to 14,211 people; Incrp to 34,578 people; and FBC to 10,535 people. Because Incrp's proposed first NCE service exceeds the other applicants' proposals by at least 5,000 people, PCC, NMRG, and FBC are each eliminated. Incrp is the tentative selectee for Group 97.

15. **Group 102A.**<sup>33</sup> This group consists of six applications to serve different communities in Kansas. Primera Iglesia Bautista Ebenezer (PIBE) and Libertad en Cristo Ministries (LECM) each proposes to serve Dodge City; LECM also proposes to serve Garden City; Radio Vida Kansas, Inc. (RVKI) proposes to serve Jetmore; Liberal Music & Education Foundation (LMEF) proposes to serve Liberal; and St. John the Baptist Catholic Church of Meade, Kansas (SJBCC) proposes to serve Meade. LMEF and SJBCC are the only two applicants to claim eligibility for a fair distribution preference.<sup>34</sup> Therefore, PIBE, LECM (both proposals), and RVKI are each eliminated. SJBCC is the only applicant to claim a first NCE service preference. Specifically, SJBCC claims that it will provide first NCE service to 2,019 people. We note that LMEF filed an Informal Objection,<sup>35</sup> asserting that SJBCC's certification that its proposal will provide a first NCE service to more than 2,000 people is inaccurate and false. LMEF claims that SJBCC would only provide a first NCE service to 1,872 persons. We disagree. Our staff engineering analysis confirms that SJBCC would provide a first NCE service to 2,028 persons. We, therefore, deny the LMEF Informal Objection. Accordingly, SJBCC is the tentative selective in Group 102A.

16. **Group 136A.**<sup>36</sup> This group consists of seven applications to serve different communities in North Carolina. Craven County SBA, Inc. (CCS) has three applications in the group, for Aurora (CCS-Aurora), Chocowinity (CCS-Chocowinity), and Dover (CCS-Dover). Regeneration Outreach Center (ROC) and Church Planters of America (CPA) each proposes to serve Washington. The remaining applicants are: La Ft L Aumon Np (LFLA) for Greenville, and Down East Communications CDC and Center for the Performing Arts (DEC) for Vanceboro. CCS-Aurora, CCS-Chocowinity, CCS-Dover,

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<sup>32</sup> See File Nos. 167473, 166194, 166824, 167033, and 167345, Fair Distribution of Service Section, and associated exhibits. PCC claims to provide a first NCE service to 20,627 of the 57,824 people within its 60 dBu contour; NMRG to 14,211 of the 44,354 people; Incrp to 34,578 of the 77,286 people; and FBC to 10,535 of the 19,842 people. NBM Tipton's 60 dBu contour encompasses 11,760 people. NBM Tipton's claimed combined first and second NCE service is 8,200 people (0 first service and 8,200 second service). Thus, each applicant would provide first NCE service, or 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.

<sup>33</sup> Group 102, which originally contained 16 applications, was bifurcated as a result of a technical amendment. The remaining applications in the MX group will be evaluated as Group 102B in a subsequent order.

<sup>34</sup> See File Nos. 167068 and 167362, Fair Distribution of Service Section, and associated exhibits. LMEF claims that it would provide a second NCE service to the entire population of 22,064 people within its 60 dBu contour while SJBCC claims that it would provide a combined first or second NCE service to 2,869 people (2,019 first service plus 850 second service) of the 5,271 people within its 60 dBu contour. Accordingly, each applicant would 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.

<sup>35</sup> See Pleading No. 184397 (filed February 4, 2022). We generally do not consider objections at this stage, but rather, review the merits of any objection if/when the subject application becomes accepted for filing. However, because LMEF's Informal Objection to the SJBCC application relates to the accuracy of the section 307(b) fair distribution analysis, we consider it herein.

<sup>36</sup> Group 136, which originally contained 13 applications, was bifurcated as a result of a settlement. The remaining four applications in the MX group will be evaluated as Group 136B in a subsequent order.

LFLA, and DEC<sup>37</sup> each assert eligibility for a fair distribution preference based on second NCE service population totals. ROC and CPA do not claim eligibility for a fair distribution preference, and are therefore, each eliminated. Although CCS-Aurora, CCS- Chocowinity, CCS-Dover, and LFLA each certifies eligibility for a fair distribution preference, each applicant has failed to provide sufficient documentation to support its claim.<sup>38</sup> Accordingly, CCS-Aurora, CCS-Chocowinity, CCS-Dover, and LFLA are each eliminated. DEC would provide a first or second NCE service to 51,234 people (7 first service plus 51, 227 second service). Accordingly, DEC is the tentative selectee in Group 136A.

17. **Group 137A.**<sup>39</sup> This group consists of nine applications to serve different communities in North Carolina and South Carolina. Vida Ministry, Inc. (Vida) and Divine Mercy Radio, Inc. (DMR) each proposes to serve Aberdeen, North Carolina. The additional North Carolina applicants are: WUNC Public Radio, LLC (WUNC) for Laurinburg; La Ft L Aumon Np (LFLA) for Pinehurst; and Truth Media, Inc. (Truth Media) for Troy. The four remaining applicants propose to serve Florence, South Carolina: Florence Baptist Temple (Florence), Bible Broadcasting Network, Inc. (BBN), South Carolina Educational Television Commission (SCET), and Radio Free Communications, Inc. (Radio Free). WUNC asserts eligibility for a fair distribution preference based on first NCE service population totals.<sup>40</sup> The other applicants do not claim eligibility for a first NCE service fair distribution preference. Accordingly, Vida, DMR, LFLA, Truth Media, Florence, BBN, SCET, and Radio Free are each eliminated. WUNC is the tentative selectee for Group 137A.

18. **Group 152.** This group consists of three applications to serve different communities in New Mexico and Arizona. Good News Broadcasting Network, Inc. (Good News) and New Hope Baptist Church – Gallup (New Hope) each proposes to serve Gallup, New Mexico. Gallup Public Radio (Gallup) proposes to serve Saint Michaels, Arizona. Gallup claims that it is eligible for a fair distribution preference.<sup>41</sup> Good News and New Hope do not. Therefore, Good News and New Hope are eliminated. Gallup is the tentative selectee for Group 152.

19. **Group 157.** This group consists of seven applications to serve different communities in New Mexico and Texas. In New Mexico, Christian Ministries of the Valley, Inc. (CMVI) proposes to serve Anthony; Centro Familiar de Restauracion y Vida (CFRV) proposes to serve Chaparral; Radio Bilingue,

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<sup>37</sup> See File No. 166343, Fair Distribution of Service Section, and associated exhibits. DEC's 60 dBu contour encompasses 177,142 people, and its claimed aggregated first and second NCE service is 51,234 people. Thus, DEC 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.

<sup>38</sup> See File No. 165533, 165536, 167339, and 165534, Fair Distribution of Service Section, and associated exhibits. CCS-Aurora, CCS-Dover, and LFLA's applications do not enumerate the number of people who would receive the claimed first or second NCE service. Accordingly, we find the CCS-Aurora, CCS-Dover, and LFLA's claims of 307(b) eligibility unreliable and lacking the basic information that is needed to include and compare the proposals with the others in the group. CCS-Chocowinity's application contains attachments, which are corrupted or otherwise inaccessible. Although Bureau staff contacted CCS-Chocowinity repeatedly to obtain copies of the supporting documentation, CCS-Chocowinity failed to respond.

<sup>39</sup> Group 137, which originally contained 16 applications, was divided into three sub-groups as a result of a technical amendment. The remaining six applications will be evaluated as Groups 137B and 137C in subsequent orders.

<sup>40</sup> See File No. 167771, Fair Distribution of Service Section, and associated exhibits. WUNC's 60 dBu contour encompasses 104,436 people, and its claimed first NCE service is 37,299 people. Thus, WUNC would provide first NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>41</sup> See File No. 166062, Fair Distribution of Service Section, and associated exhibits. Gallup's 60 dBu contour encompasses 28,467 people. Gallup's claimed first NCE service is 4,009, and its claimed aggregated first and second NCE service is 15,157 people. Thus, it would provide first NCE service, and 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.

Inc. (RBI) proposes to serve Deming; and New Hope Baptist Church - Silver City (NHBC) and International Scripture Ministries, Inc. (ISMI) each proposes to serve Silver City. In Texas, Aok Media Corporation El Paso Texas 79936 (AMC) proposes to serve Canutillo; Gandara for Latinos, Inc. (GFLI) proposes to serve El Paso. RBI is the only applicant that claims that it is eligible for a fair distribution preference.<sup>42</sup> Therefore, CMVI, CFRV, NHBC, ISMI, AMC, and GFLI are each eliminated. RBI is the tentative selectee for Group 157.

20. **Group 199.** This group consists of four applications to serve different communities in Texas. La Voz de Dios Comunidad Cristiana, Inc. (LVDCC) proposes to serve Alice; Texas Public Radio (TPR) also proposes to serve Alice (TPR Alice), and Hebronville (TPR Hebronville) in a second proposal; Radio Bilingue (RB) proposes to serve San Diego. TPR Hebronville and RB each asserts eligibility for a fair distribution preference.<sup>43</sup> LVDCC and TPR Alice do not and are each eliminated. Only TPR Hebronville claims that it is entitled to a first NCE service preference. Accordingly, RB is also eliminated. TPR Hebronville is the tentative selectee for Group 199.

21. **Group 202.** This group consists of four applications to serve different communities in Texas. Texas Public Radio (TPR) proposes to serve Asherton, and separately, Uvalde. San Antonio Christian Church (SACC) also proposes to serve Uvalde. Christian Ministries of the Valley, Inc. (CMV) proposes to serve Carrizo Springs. CMV claims that it is eligible for a fair distribution preference based solely on second service population totals.<sup>44</sup> The other applicants do not. Therefore, TPR (both proposals) and SACC are eliminated. CMV is the tentative selectee for Group 202.

#### IV. ADDITIONAL MATTERS

22. **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.<sup>45</sup> 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.<sup>46</sup>

23. 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

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<sup>42</sup> See File No. 166379, Fair Distribution of Service Section, and associated exhibits. RBI claims that it would provide aggregated new first or second NCE service to the entire population of 23,022 people (22,706 first service plus 316 second service) within its 60 dBu contour. Accordingly, RBI 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.

<sup>43</sup> See File Nos. 166679 and 166354, Fair Distribution of Service Section, and associated exhibits. TPR Hebronville's 60 dBu contour encompasses 6,225 people, and its claimed first NCE service is 6,225 people. RB's 60 dBu contour encompasses 41,418 people, and its claimed combined first and second NCE service is 8,051 people (2,477 first service and 5,574 second service). Thus, TPR Hebronville and RB would each provide first or second NCE service to more than 2,000 people and at least 10% of the population within their respective 60 dBu contours.

<sup>44</sup> See File No. 166724, Fair Distribution of Service Section, and associated exhibits. CMV's 60 dBu contour encompasses 21,292 people, and its claimed aggregated first and second NCE service is 21,145 people. Thus, CMV would provide aggregated first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>45</sup> 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).

<sup>46</sup> 47 CFR § 73.7004.

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.

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.

## V. ORDERING CLAUSES

25. 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.<sup>47</sup> 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.

26. **Group 41A.** Accordingly, IT IS ORDERED, That the Application filed by Slab City Community Group, Inc. (File No. 167466) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Bombay Beach, 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 application of Remante Broadcasting Network (File No. 167140), and TO GRANT the application of Slab City Community Group, Inc. (File No. 167466) 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.

27. **Group 49A.** Accordingly, IT IS ORDERED, That the Application filed by Historic Oxford, Limited (File No. 167290) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Trappe, Maryland, 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 Bible Broadcasting Network, Inc. (File No. 167306), Delaware First Media Corporation (File Nos. 166370 and 166369), Priority Radio, Inc. (File No. 166550), Iglesia de Evangelization Misionera Jovenes Cristianos de Maryland, Inc. (File No. 167735), and Maranatha Ministries/Joy Comm. (File No. 167759), and TO GRANT the application of Historic Oxford, Limited (File No. 167290) 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.

28. **Group 59B.** Accordingly, IT IS ORDERED, That the Application filed by Inverse Focus Ministry, Inc. (File No. 167493) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Baconton, 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

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<sup>47</sup> 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).

applications of Faith and Action Community Outreach, Inc. (File No. 165985), Big Bend Heritage Music Association, Inc. (File No. 166291), Elijah Radio (File No. 167410), Georgia Public Telecommunications Commission (File No. 167018), Church Planters of America (File No. 167096), CSN International (File No. 167809), and Bemiss Road Baptist Church and Lowndes County Christian Academy Inc. (File No. 167233), and TO GRANT the application of Inverse Focus Ministry, Inc. (File No. 167493) 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 95.** Accordingly, IT IS ORDERED, That the Application filed by New Beginnings Movement Inc. (File No. 167516) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Seymour, Indiana, 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 Olivet Nazarene University (File No. 165984), World Federation of Pastors and Ministers of the Full Gospel, Inc. (File No. 167179), Lushomo Health Education Centre (File No. 167818), Appalachian Educational Communication Corporation (File No. 167447), and Community Radio for Hoosiers Inc. (File No. 167634), and TO GRANT the application of New Beginnings Movement Inc. (File No. 167516) 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 96B.** Accordingly, IT IS ORDERED, That the Application filed by A Hand Up, Inc. (File No. 167842) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Chesterton, Indiana, 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 Fairhaven Baptist Church (File No. 167853), World Federation of Pastors and Ministers of the Full Gospel, Inc. (File No. 167644), Olivet Nazarene University (File No. 166156), Classical Radio Novo, Inc. (File No. 166797), and TO GRANT the application of A Hand Up, Inc. (File No. 167842) 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 97.** Accordingly, IT IS ORDERED, that the Application filed by Incrp, Inc. (File No. 166824) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Russiaville, Indiana, 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 Side by Side, Inc. (File Nos. 166913, 166902, and 166918), New Beginnings Movement Inc. (File Nos. 166717 and 167033), Radio 74 Internationale (File No. 167600), Covenant Network (File No. 167833), Pensacola Christian College, Inc. (File No. 167473), Olivet Nazarene University (File No. 166030), North Manchester Radio Group Corp. (File No. 166194), and Faith Baptist Church (File No. 167345), and TO GRANT the application of Incrp, Inc. (File No. 166824) 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 102A.** Accordingly, IT IS ORDERED, That the Application filed by St. John the Baptist Catholic Church of Meade, Kansas (File No. 167362) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Meade, Kansas, 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 Primera Iglesia Bautista Ebenezer (File No. 167544), Libertad en

Cristo Ministries (File Nos. 166650 and 166649), Radio Vida Kansas, Inc. (File No. 167188), and Liberal Music & Education Foundation (File No. 167068), and TO GRANT the application of St. John the Baptist Catholic Church of Meade, Kansas (File No. 167362) 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. IT IS FURTHER ORDERED, That the Informal Objection, filed by Liberal Music & Education Foundation (Pleading No. 184397), is DENIED.

33. **Group 136A.** Accordingly, IT IS ORDERED, That the Application filed by Down East Communications CDC and Center for the Performing Arts (File No. 166343) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Vanceboro, 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 Craven County SBA, Inc. (File Nos. 165533, 165534, and 165536), La Ft L Aumon Np (File No. 167339), Regeneration Outreach Center (File No. 167871), and Church Planters of America (File No. 167761), and TO GRANT the application of Down East Communications CDC and Center for the Performing Arts (File No. 166343) 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 137A.** Accordingly, IT IS ORDERED, That the Application filed by WUNC Public Radio, LLC (File No. 167771) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Laurinburg, 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 Vida Ministry, Inc. (File No. 167111), Divine Mercy Radio, Inc. (File No. 166831), La Ft L Aumon Np (File No. 167352), Truth Media, Inc. (File No. 166082), Florence Baptist Temple (File No. 167417), Bible Broadcasting Network, Inc. (File No. 167276), South Carolina Educational Television Commission (File No. 166258), and Radio Free Communications, Inc. (File No. 165961), and TO GRANT the application of WUNC Public Radio, LLC (File No. 167771) 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 152.** Accordingly, IT IS ORDERED, That the Application filed by Gallup Public Radio (File No. 166062) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Saint Michaels, 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 Good News Broadcasting Network, Inc. (File No. 167858) and New Hope Baptist Church – Gallup (File No. 167524), and TO GRANT the application of Gallup Public Radio (File No. 166062) 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 157.** Accordingly, IT IS ORDERED, That the Application filed by Radio Bilingue, Inc. (File No. 166379) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Deming, New Mexico, 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 Christian Ministries of the Valley, Inc. (File No. 166725), Centro Familiar de Restauracion y Vida (File No. 167079), New Hope Baptist Church - Silver City (File No. 167508), International Scripture Ministries, Inc. (File No. 167286), Aok Media Corporation El Paso Texas 79936 (File No. 167576), and Gandara for Latinos, Inc. (File No. 166757), and TO GRANT the application of Radio Bilingue, Inc. (File No.

166379) 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 199.** Accordingly, IT IS ORDERED, that the Application filed by Texas Public Radio (File No. 166679) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Hebronville, 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 La Voz de Dios Comunidad Cristiana, Inc. (File No. 165578), Texas Public Radio (File No. 166855), and Radio Bilingue (File No. 166354), and TO GRANT the application of Texas Public Radio (File No. 166679) 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 202.** Accordingly, IT IS ORDERED, That the Application filed by Christian Ministries of the Valley, Inc. (File No. 166724) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Carrizo Springs, 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 Texas Public Radio (File Nos. 166854 and 166849), and San Antonio Christian Church (File No. 167174), and TO GRANT the application of Christian Ministries of the Valley, Inc. (File No. 166724) 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