

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

In the Matter of )  
 )  
Comparative Consideration of 33 Groups of )  
Mutually Exclusive Applications )  
for Permits to Construct New or Modified )  
Noncommercial Educational FM Stations ) NCE Reserved Allotment Group Numbers 5,  
35, 36, 37, 38, 39, 40, 43, 44, 45, 46, 47, 48,  
49, 50, 51, 52, 53, 54, 55, 58, 59, 60, 61, 62,  
63, 65, 66, and 67; NCE MX Group  
Numbers 237, 540A, 95083E, and 970312

MEMORANDUM OPINION AND ORDER

Adopted: June 20, 2011

Released: June 21, 2011

By the Commission:

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I. BACKGROUND

1. By this Memorandum Opinion and Order (“Order”), the Commission considers 33 groups of mutually exclusive applications for new or modified noncommercial educational (“NCE”) FM station construction permits.<sup>1</sup> The Commission resolves such conflicting NCE proposals by applying

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<sup>1</sup> Each application in Group 5 and Group 35 through 67 was filed during a filing window that was open from February 19, 2010, through February 26, 2010, for 67 existing, vacant FM allotments on Channels 221 through 300 that had been reserved for NCE use. See *Media Bureau Announces Filing Window for Vacant FM Allotments Reserved for Noncommercial Educational Use*, Public Notice, 24 FCC Rcd 12621 (MB 2009) (“*Reserved Allotment Notice*”); *Filing Window for Vacant FM Allotments Reserved for Noncommercial Educational Use Rescheduled to February 19-26, 2010*, Public Notice, 24 FCC Rcd 12952 (MB 2009). Each application in Group 237 was filed during a filing window that was open from October 12, 2007, through October 22, 2007, for FM reserved band (Channels 201-220) proposals. See *Media Bureau Announces NCE FM New Station and Major Change Filing Procedures for October 12-October 19, 2007 Window*, Public Notice, 22 FCC Rcd 15050 (MB 2007) (“*Procedures Notice*”); *Media Bureau to Extend Window for NCE FM New Station and Major Change Applications; Window Will Close on October 22, 2007*, Public Notice, 22 FCC Rcd 18680 (MB 2007). The applications in Group 95083E and Group 970312 were cut off from competing applications prior to the October 2007 window. Pre-

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comparative procedures codified in Part 73, Subpart K, of the Commission's Rules (the "Rules").<sup>2</sup> This Order uses a point system to tentatively select applications for grant and initiates a 30-day period for filing petitions to deny against the applicants tentatively selected.<sup>3</sup> The majority of the applications considered in this Order propose to use spectrum that has been reserved for NCE use through the allotment process. This Order also considers several groups of applications which were filed outside of the allotment process. The comparative selection applied to such groups is virtually identical, but with slight differences in the threshold determinations.

## II. NCE RESERVED FM ALLOTMENTS

2. Each application in Groups 5 through 67 herein proposes to operate on an existing, vacant FM allotment on Channels 221 through 300 (the "non-reserved FM band") that has been reserved for NCE use.<sup>4</sup> The Commission reserves a non-reserved FM Band allotment if the petitioner successfully demonstrates that no reserved channel could be used without causing prohibited interference to (1) TV channel 6 stations, or (2) foreign broadcast stations.<sup>5</sup>

3. In the *NCE Second Report and Order* the Commission adopted a third test for channel reservation (the "third channel reservation standard").<sup>6</sup> Under the third channel reservation standard, a reservation proponent must demonstrate that (1) it is technically precluded from using a reserved band channel, and (2) it would provide a first and/or second NCE radio service to at least ten percent of the population within the 60 dBu (1 mV/m) contour of its proposed station, and that such population is at least 2,000 people.<sup>7</sup> The Commission specifically advised prospective NCE applicants that the first or second NCE service requirement remains applicable at the application stage.<sup>8</sup> Therefore, if the third

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window procedures applicable specifically to these groups are described further in *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Memorandum Opinion and Order, 16 FCC Rcd 5074, 5103-04 (2002) ("*NCE MO&O*").

<sup>2</sup> 47 C.F.R. §§ 73.7000 – 73.7005.

<sup>3</sup> *See id.* § 73.7004(b).

<sup>4</sup> Non-reserved FM band channels reserved exclusively for NCE use appear with an asterisk designation in the Table of FM Allotments, Section 73.202 of the Commission's Rules. *See* 47 C.F.R. § 73.202. Sixty-seven vacant reserved FM allotments were available for application in the February 2010 window. *See Reserved Allotment Notice* at Attachment A.

<sup>5</sup> *See* 47 C.F.R. § 73.202(a)(1)(i).

<sup>6</sup> *See Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691 (2003) ("*NCE Second Report and Order*").

<sup>7</sup> *Id.* at 6703-05. The Commission extended the revised reservation policy to existing, vacant FM allotments for which an allocation proceeding had been initiated, as determined by the release of a Notice of Proposed Rulemaking, before the effective date of the standards, August 7, 2000. The Media Bureau then opened a window accepting reservation showings for approximately 500 FM channels. *See Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments*, Public Notice, 18 FCC Rcd 19600 (MB 2003). In response, 129 petitioners sought to reserve 91 vacant FM allotments. The 67 reserved FM channels available for application in the February 2010 window ensued from these case-by-case Commission allotment decisions. *See* 47 C.F.R. § 73.7000.

<sup>8</sup> *See NCE Second Report and Order*, 18 FCC Rcd at 6705 ("Reserved allotments will be conditioned on the construction and licensing of an NCE station that provides the requisite level of first and second NCE service. In the

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channel reservation standard served as the basis for reservation of the allotment, applicants for that allotment must provide a first or second NCE service to at least ten percent of the population within the proposed station's service area and that population must be at least 2,000 people. Applications which fail to satisfy this requirement are eliminated and will not proceed to the point system analysis. Allotments reserved by means of the third channel reservation standard are identified in the point system determinations below.

### III. GENERAL NCE PROCEDURES

4. The Commission's analysis of mutually exclusive groups of NCE applications generally consists of three main components. First, for non-allotment groups (in which applicants can propose service to different communities) the Media Bureau ("Bureau") performs a threshold fair distribution study pursuant to Section 307(b) of the Communications Act of 1934, as amended (the "Act").<sup>9</sup> The Commission generally has used the population data and applicant certifications submitted in conjunction with Section 307(b) claims to make these comparative determinations. Second, application conflicts not resolved under this "fair distribution" analysis,<sup>10</sup> as well as mutually exclusive groups of applications for vacant FM allotments reserved for NCE use, are compared under an NCE point system,<sup>11</sup> which is a simplified, "paper hearing" process.<sup>12</sup> The Commission generally has awarded the number of points claimed by each applicant in Section IV of its application. Third, if necessary, the Commission makes a tie-breaker determination, based on applicant-provided numbers and certifications contained in Section V of each application. Each of these steps is described in greater detail below.

#### A. Section 307(b) --Threshold Fair Distribution Study.

5. When mutually exclusive applications for permits to construct NCE FM stations propose to serve different communities, the Bureau determines whether grant of any of the applications would best further the fair, efficient, and equitable distribution of radio service among communities.<sup>13</sup> An NCE FM

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event that all applications for a reserved band allotment fail to propose such service, the allotment will become unreserved by operation of law and subject to the Commission's competitive bidding licensing procedures." See also 47 C.F.R. § 73.202(a)(1)(ii).

<sup>9</sup> See 47 U.S.C. § 307(b).

<sup>10</sup> See 47 C.F.R. § 73.7002 (procedures for selecting among mutually exclusive applicants for stations proposing to serve different communities).

<sup>11</sup> See 47 C.F.R. § 73.7003 (point system selection procedures).

<sup>12</sup> See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Notice of Proposed Rulemaking, 10 FCC Rcd 2877 (1995), *further rules proposed*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 21167 (1998), *rules adopted*, Report and Order, 15 FCC Rcd 7386 (2000) ("NCE Order"), *vacated in part on other grounds sub nom.*, *National Public Radio v. FCC*, 254 F.3d 226 (D.C. Cir. 2001), *clarified*, Memorandum Opinion and Order, 16 FCC Rcd 5074 ("NCE MO&O"), *Erratum*, 16 FCC Rcd 10549, *recon. denied*, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002) ("NCE Reconsideration Order"), *aff'd sub nom. American Family Ass'n v. FCC*, 365 F.3d 1156 (D.C. Cir. 2004) ("American Family"), *cert. denied*, 543 U.S.1004 (2004).

<sup>13</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 C.F.R. § 73.7002(a). A Section 307(b) analysis is ordinarily conducted at the staff level because the Bureau has delegated authority to make Section 307(b) determinations in NCE cases. See *NCE Order*, 15 FCC

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applicant is eligible to receive a Section 307(b) preference if it would provide, within the proposed station's 60 dBu contour, a first or second reserved band channel NCE aural service to at least ten percent of the population (in the aggregate), provided that such service is to at least 2,000 people.<sup>14</sup>

6. If more than one applicant in a mutually exclusive group qualifies for a Section 307(b) preference, each applicant's first service population coverage totals are compared.<sup>15</sup> An applicant proposing a first NCE aural service to ten percent of the population and at least 2,000 people will receive a dispositive fair distribution preference over applicants for different communities that would not provide such first service.<sup>16</sup> Such an application also would receive a dispositive fair distribution preference over applicants for different communities that would provide a first NCE aural service to at least 5,000 fewer potential listeners than the next highest applicant's first service total.<sup>17</sup> If no applicant is entitled to a first service preference, we consider combined first and second NCE aural service population totals and apply the same 5,000-listener threshold. At each stage of the Section 307(b) analysis between applicants for different communities, any applicant that is comparatively disfavored in terms of eligibility or service totals is eliminated. Comparable applicants proceed to the next level of analysis, provided that different communities are still represented in the remaining pool of applicants. The process ends when the Commission determines that none of the remaining applicants can be selected or eliminated based on a Section 307(b) preference, or that each remaining applicant proposes to serve the same community. At that stage, the remaining applicants proceed to a point system analysis.

#### **B. Point System Selection Process.**

7. The Commission compares mutually exclusive groups of NCE FM applications under the point system set forth in Section 73.7003 of the Rules.<sup>18</sup> The NCE point system awards a maximum of seven merit points, based on four distinct criteria.<sup>19</sup> First, three points are awarded to applicants that certify that they have been local and established for at least two years. Applicants with a headquarters, campus, or 75 percent of their board members residing within 25 miles of the reference coordinates of the community of license are considered local. A governmental unit is considered local within its area of jurisdiction. To qualify for localism points based on board composition, the applicant also must certify that its governing documents require that such board composition be maintained. The applicant also must certify that it has placed documentation supporting its certification in a local public inspection file, and that it has submitted that documentation to the Commission. Any applicant awarded localism points in this Order has provided support for its certification. Thus, the specific point system determinations for

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Rcd at 7397. *See also* 47 C.F.R. §§ 0.61 and 0.283. In contrast, the point system analysis, which is conducted when Section 307(b) is not determinative, must be conducted by the Commission as this analysis is considered a simplified "hearing" for purposes of 47 U.S.C. § 155(c)(1). *NCE Order*, 15 FCC Rcd at 7420.

<sup>14</sup> *See* 47 C.F.R. § 73.7002(b). Applicants were required to use the 2000 Census population data and to count all reserved band aural authorizations, including stations for which a construction permit, but not a license, has been issued. *See Procedures Notice*, 22 FCC Rcd at 15052.

<sup>15</sup> *See* 47 C.F.R. § 73.7002(b).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *See* 47 C.F.R. § 73.7003.

<sup>19</sup> *See* 47 C.F.R. § 73.7003(b).

each group of mutually exclusive applications that follow only discuss an applicant's documentation if it is insufficient to justify awarding localism points.

8. Second, two points are awarded for local diversity of ownership if the principal community contours of the applicant's proposed station and any other station in which any party to the application holds an attributable interest do not overlap.<sup>20</sup> To be awarded such points, an applicant's governing documents must include a provision to maintain that diversity in the future. Applicants that are organizations governed by state charters that cannot be amended without legislative action are permitted to base the governing document component of their local diversity certifications on other safeguards that reasonably assure that board characteristics will be maintained.<sup>21</sup> Any applicant awarded diversity of ownership points in this Order has submitted copies of pertinent governing documents to support its certification or, for applicants such as state universities that are governed by laws which cannot be amended without legislative action, an appropriate alternative showing. Thus, the specific point system determinations for each group of mutually exclusive applications that follow only discuss an applicant's documentation if it is insufficient to justify awarding diversity points. An applicant that proposes a full service NCE station that would replace an attributable FM translator may exclude the translator for calculating ownership diversity points if it has pledged to request cancellation of the translator authorization upon the new station's commencement of operations.<sup>22</sup> The Commission has stated that it will, on a waiver basis, similarly allow applicants to exclude Class D (10 watt) FM stations that will be replaced by the proposed full service NCE station.<sup>23</sup> The Bureau has also extended this waiver treatment to low power FM ("LPFM") stations.<sup>24</sup>

9. Third, two points are awarded for certain statewide networks providing programming to accredited schools. These points are available only to applicants that cannot claim a credit for local diversity of ownership.<sup>25</sup>

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<sup>20</sup> See 47 C.F.R. § 73.7003(b)(2). Parties with attributable interests are defined as the applicant, its parent, subsidiaries, their officers, and members of their governing boards. See 47 C.F.R. § 73.7000. Interests of certain entities providing more than 33 percent of the applicant's equity and/or debt are also attributable. *Id.*

<sup>21</sup> See *NCE MO&O*, 16 FCC Rcd at 5095.

<sup>22</sup> *Id.* at 5102-03.

<sup>23</sup> See *Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified NCE FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101, 6120 (2007) ("*NCE Omnibus*").

<sup>24</sup> See *Comparative Consideration of 52 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Education FM Stations*, 25 FCC Rcd 8793 (2010); *Comparative Consideration of 59 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Education FM Stations*, 25 FCC Rcd 1681, 1686 (2010); *Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, 24 FCC Rcd 5013 (2010). See also *Procedures Notice*, 22 FCC Rcd at 15052-53; *Reserved Allotment Notice*, 24 FCC Rcd at 12624. An applicant seeking to avoid attribution of an LPFM interest must, as part of its window-filed application, submit a request for waiver of the Rule that would otherwise result in the attribution of the LPFM interest in the applicant's point system determination and propose to surrender the LPFM interest. The Commission will waive the LPFM cross-ownership rule so that an NCE FM construction permit may issue to an LPFM licensee, provided that the LPFM license must be divested prior to commencement of program tests by the new NCE FM station. See 47 C.F.R. § 73.860(a).

<sup>25</sup> See 47 C.F.R. § 73.7003(b)(3). The statewide network credit is an alternative for applicants that need multiple stations to serve large numbers of schools and, therefore, do not qualify for the local diversity of ownership credit.

10. Fourth, an applicant that proposes the best technical proposal in the group (*i.e.*, proposes service to the largest population and area, excluding substantial areas of water) may receive up to two points. The applicant receives one point if its proposed service area *and* population are ten percent greater than those of the next best area and population proposals, or two points if both are 25 percent greater than those of the next best area and population proposals as measured by each proposed station's predicted 60 dBu signal strength contour.<sup>26</sup> If the best technical proposal does not meet the 10 percent threshold, no applicant is awarded points under this criterion. In considering this criterion, we have generally accepted applicants' coverage and population claims. We have rounded any numbers expressed in decimals to the nearest whole numbers.

11. Finally, the Commission tallies the total number of points awarded to each applicant. The applicant with the highest score in a group is designated the "tentative selectee." All other applicants are eliminated.

### C. Tie-Breakers.

12. Applicants tied with the highest number of points awarded in a particular group proceed to a tie-breaker round, in accordance with Section 73.7003(c) of the Rules.<sup>27</sup> The first tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant.<sup>28</sup> The applicant with the fewest attributable authorizations prevails. If the tie is not broken by this first factor, we apply a second tie-breaker: the number of radio station applications attributable to each applicant. Applicants are required to include applications for construction permits filed for other aural services prior to the window, the current application, as well as all other applications filed within the window.<sup>29</sup> If that second factor fails to break the tie, we use mandatory time-sharing as the tie-breaker of last resort.

### D. Timely Documentation of Comparative Qualifications.

13. The NCE application, FCC Form 340, is certification-based, but requires applicants to document their claims by submitting supporting information both to the Commission and to a local public file.<sup>30</sup> Applicant point claims must be readily ascertainable from timely-filed application exhibits. Certifications which require the applicant to submit documentation, but which are not supported with any such timely submitted documentation, cannot be credited. For example, the Commission herein rejects claims where the applicant certifies that it qualifies for points for diversity of ownership or as an established local applicant but fails to supply supporting information referred to in the certification. Every applicant claiming points for diversity of ownership must certify that the proposed station's service area would not overlap that of an attributable existing station, that its governing documents require that

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<sup>26</sup> *Id.* § 73.7003(b)(4). See *NCE Omnibus*, 22 FCC Rcd at 6121-22 (if there is one top applicant in terms of area and population, but no single next best applicant for both factors, the Commission will compare the top applicant's proposed area to the next best area of one applicant and the top applicant's population to the next best population of another applicant).

<sup>27</sup> 47 C.F.R. § 73.7003(c).

<sup>28</sup> *Id.* § 73.7003(c)(1). Applicants are required to count all attributable full service commercial and NCE radio stations and certain FM translator stations. An applicant may exclude fill-in translators and any translator which the applicant seeks to replace with its full service proposal filed in this window. Applicants requesting and receiving a rule waiver may similarly exclude an LPFM or Class D FM station.

<sup>29</sup> See *NCE Omnibus*, 22 FCC Rcd at 6123.

<sup>30</sup> See *NCE Order*, 15 FCC Rcd at 7423.

such diversity be maintained, and “that it has placed documentation of its diversity qualifications in a local public file and has submitted to the Commission copies of that documentation.”<sup>31</sup> Similar certifications and documents are required of applicants claiming points as established local applicants.<sup>32</sup> While there is some flexibility in the type of documentation an applicant may provide, an applicant submitting no timely documentation at all cannot have made a valid certification. We have adjusted the points of such applicants downward.

#### IV. POINT SYSTEM DETERMINATIONS

14. This Section contains narrative descriptions of our point system analyses in each mutually exclusive proceeding, organized chronologically by assigned group number. The reserved allotment groups (Group 5, Groups 35-67) are being considered for the first time. In the NCE mutually exclusive (“MX”) groups, the Bureau or Commission previously considered the group and named a tentative selectee, followed by filings or events which require additional analysis.<sup>33</sup> Unless otherwise noted, each component of the analysis is based on applicant-provided information.<sup>34</sup> We have provided readers with an Appendix that condenses the group-by-group narratives for the reserved allotment groups that follow into chart form for quick reference. A more detailed guide to the Appendix and its use of abbreviations appears at the beginning of that Section.

15. At the outset, we note that each group of applicants has had an opportunity to resolve application conflicts by settlement.<sup>35</sup> In addition, we note that applicants were required to report their qualifications as of the date of application. Any changes made thereafter may potentially have diminished, but could not enhance, an applicant’s comparative position.<sup>36</sup>

16. **NCE Reserved Allotment Group 5.** This group is comprised of 11 applications proposing service on vacant Channel 273A at Hemet, California. The applicants are: Riverside

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<sup>31</sup> See *FCC Form 340*, Instructions, Question IV(2). With respect to documenting current diversity, the preferred information is a map showing no overlap or a statement that the party to the application holds no attributable interest in any station. To document future diversity, the applicant would generally submit a copy of the governing documents referenced in the certification.

<sup>32</sup> See *FCC Form 340*, Instructions, Question IV(1). Examples of acceptable documentation include corporate materials from the secretary of state, lists of names, addresses, and length of residence of board members, copies of governing documents requiring a 75 percent local governing board, and course brochures indicating that classes have been offered at a local campus for the preceding two years.

<sup>33</sup> In each of these groups, a petitioner challenged the exclusion or inclusion of challenged or claimed points, thus potentially altering the outcome of the particular NCE MX group. Accordingly, the Bureau has referred these groups to the Commission.

<sup>34</sup> Specifically, information relating to the applicants’ Section 307(b) claims including, where applicable, populations receiving first and/or second NCE radio services, were reported by the applicants in their responses to Questions III(a) and (b) of their applications and associated exhibits. Claims to qualify as established local applicants, for diversity of ownership, and as statewide networks were reported in the responses to Questions IV(1), (2) and (3) respectively, and in supporting documentation. Applicants reported the area and population figures used in our analyses of technical parameters in responses to Question IV(4) and associated exhibits. Tie-breaker information concerning the applicants’ attributable interests in other radio station authorizations and other radio station applications were reported in responses to Questions V(1) and (2), respectively.

<sup>35</sup> See 47 C.F.R. § 73.7003(d).

<sup>36</sup> See 47 C.F.R. §73.7003(e).

Community College, Norco Campus (“RCC”), First Baptist Church of Hemet (“FBCH”), Southern California Public Radio (“SCPR”), Radio Bilingue, Inc. (“RBI”), Centro Cristiano Vida Abundante, Inc. (“CCVA”), Good News Radio (“GNR”), Hemet Seventh-Day Adventist Church (“HSDA”), Hispanic Family Christian Network, Inc. (“HFCN”), Holy Cross Radio (“HCR”), Codepink Redlands (“Codepink”), and Center for Public Deliberation (“CPB”). The third channel reservation standard served as the basis for reservation of the instant allotment. Accordingly, each applicant was required to demonstrate that its proposal would provide a first or second NCE service to at least ten percent of the population within the proposed station's service area and to at least 2,000 people. RCC and CCVA fail to satisfy these service provisions, and, accordingly, each is eliminated.<sup>37</sup> The remaining ten applicants demonstrate compliance with the third channel reservation criteria<sup>38</sup> and proceed to the point system analysis.

17. FBCH, HSDA, Codepink, and CPD each claim points as established local applicants. SCPR, RBI, GNR, HFCN, and HCR do not claim localism points. Each applicant, with the exception of SCPR, claims two points for diversity of ownership. HSDA fails to submit documentation to support its diversity claim, and, accordingly, will not receive points under this criterion.<sup>39</sup> With respect to technical parameters, FBCH claims that its proposed 60 dBu contour would encompass 2,470 square kilometers with a population of 414,660; SCPR, 780 square kilometers and 144,851 people; RBI, 2,743 square kilometers and 518,776 people; GNR, 2,494 square kilometers and 419,161 people; HSDA, 2,343 square kilometers and 391,223 people; HFCN, 779 square kilometers and 133,402 people; HCR, 2,767 square kilometers and 512,954 people; Codepink, 1,667 square kilometers and 306,513 people; and CPD, 1,980 square kilometers and 371,837 people. No applicant is eligible for any points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best proposal. Accordingly, FBCH, Codepink, and CPD are credited with a total of five points each; HSDA receives three points; RBI, GNR, HFCN, and HCR are awarded two points each; and SCPR is not credited with any points. HSDA, RBI, GNR, HFCN, HCR, and SCPR are therefore each eliminated, and FBCH, Codepink, and CPD proceed to a tie-breaker.

18. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. FBCH, Codepink, and CPD certify that they each have no attributable interests in any radio authorizations. Accordingly, each applicant proceeds to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. FBCH, Codepink, and CPD certify that they each have an attributable interest in one radio application. Accordingly, we proceed to the tie-breaker of last resort - mandatory time-sharing. FBCH, Codepink, and CPD are thus each tentative selectees in Group 5 on a time-sharing basis.

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<sup>37</sup> RCC and CCVA each certify that their proposals will not provide combined first and second NCE service to at least ten percent of the population within their proposed 60 dBu contours.

<sup>38</sup> See FBCH, SCPR, RBI, GNR, HSDA, HFCN, HCR, Codepink, and CPD Applications, Questions III(1), III(2), and associated exhibits. FBCH claims that it would provide aggregated first and second NCE service to 126,358 of the 414,660 people encompassed within its proposed 60 dBu contour; SCPR to 40,241 of the 144,851 people; RBI to 123,522 of the 518,776 people; GNR to 102,145 of the 419,161 people; HSDA to 128,167 of the 391,223 people; HFCN to all 133,402 of the 133,402 people; HCR to 104,456 of the 512,954 people; Codepink to 57,137 of the 306,513 people; and CPD to 73,346 of the 371,837 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>39</sup> Although HSDA certifies that it currently has no authorizations, HSDA provides no indication that it timely adopted governing documents that would require it to maintain diversity in the future.



19. **NCE Reserved Allotment Group 35.** This group is comprised of five applications proposing service on vacant Channel 282A at West Tisbury, Massachusetts, an allotment reserved by means of the third channel reservation standard. The applicants are: Martha's Vineyard Community Radio, Inc. ("MVCR"), New Bedford Christian Radio, Inc. ("NBCR"), Calvary Chapel of Cape Cod, Inc. ("Calvary-CC"), Cape Cod Catholic Radio, Inc. ("CCCR"), and Hispanic Family Christian Network, Inc. ("HFCN"). Each applicant satisfies the third channel reservation criteria,<sup>40</sup> and the entire group, therefore, proceeds to the point hearing.

20. Each applicant, with the exception of HFCN, claims three points as an established local applicant. MVCR fails to submit any documentation to support its localism claim, and, accordingly, will not receive points under this criterion. Each applicant certifies that it is eligible for two points for diversity of ownership. MVCR's diversity claim is based on a pledge to divest LPFM station WVVY-LP, Tisbury, Massachusetts. MVCR, however, has not shown that its governing documents limit its ability to acquire other stations in the same area after divesting the LPFM station. Accordingly, we will not award points to MVCR under this criterion. MVCR is the only applicant to claim points as a statewide network. However, MVCR does not submit any information to support its claim that it qualifies as a statewide network, and, therefore, will not receive points under this criterion. With respect to technical parameters, MVCR claims that its proposed 60 dBu contour would encompass 595 square kilometers with a population of 83,012; NBCR, 585 square kilometers and 52,116 people; Calvary-CC, 230 square kilometers and 14,884 people; CCCR, 269 square kilometers and 14,856 people; and HFCN, 3,414 square kilometers and 66,382 people. No applicant is eligible for points under the best technical proposal criterion because no applicant proposes to serve both the largest area and population, at least 10 percent greater than the next best proposal. Accordingly, NBCR, Calvary-CC, and CCCR are credited with a total of five points each; HFCN receives two points; and MVCR is not credited with any points. HFCN and MVCR are therefore each eliminated, and NBCR, Calvary-CC, and CCCR proceed to a tie-breaker.

21. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. NBCR certifies that it has an attributable interest in one radio authorization. Calvary-CC and CCCR certify that they each have no attributable interests in any radio authorizations. Accordingly, NBCR is eliminated, and Calvary-CC and CCCR proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. Calvary-CC and CCCR certify that they each have an attributable interest in one radio application. Accordingly, we proceed to the tie-breaker of last resort - mandatory time-sharing. Calvary-CC and CCCR are thus each tentative selectees in Group 35 on a time-sharing basis.

22. **NCE Reserved Allotment Group 36.** This group is comprised of four applications proposing service on vacant Channel 279A at Hubbardston, Michigan, an allotment reserved by means of the third channel reservation standard. The applicants are: Calvary Radio Network, Inc. ("Calvary"), Saidnewsfoundation ("Saidnews"), Hubbardston Community Radio ("HCR"), and Evangelical Broadcasting Group, Inc. ("EBG"). Each applicant demonstrates compliance with the third channel reservation criteria.<sup>41</sup> The entire group, therefore, proceeds to a point system analysis.

<sup>40</sup> See MVCR, NBCR, Calvary-CC, CCCR, and HFCN Applications, Questions III(1), III(2), and associated exhibits. MVCR claims that it would provide aggregated first and second NCE service to all 83,012 of the 83,012 people encompassed within its 60 dBu contour; NBCR to 18,126 of the 52,116 people; Calvary-CC to 2,893 of the 14,884 people; CCCR to 2,992 of the 14,856 people; and HFCN to all 66,382 of the 66,382 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>41</sup> See Calvary, Saidnews, HCR, and EBG Applications, Questions III(1), III(2), and associated exhibits. Calvary claims that it would provide aggregated first and second NCE service to 19,653 of the 52,170 people encompassed within its 60 dBu contour; Saidnews to 16,957 of the 106,587 people; HCR to 54,913 of the 98,027 people; and

(continued....)

23. HCR is the only applicant to certify that it is entitled to three points as an established local applicant. Each applicant claims two points for diversity of ownership. Calvary and Saidnews, however, provide no documentation to support their respective diversity claims, and, accordingly, neither will receive points under this criterion. None of the applicants claim points as statewide networks. With respect to technical parameters, Calvary claims that its proposed 60 dBu contour would encompass 1,896 square kilometers with a population of 52,170; Saidnews, 2,502 square kilometers and 106,587 people; HCR, 2,290 square kilometers and 98,027 people; and EBG, 2,544 square kilometers and 80,216 people. No applicant is eligible for any points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best proposal. Accordingly, HCR is credited with a total of five points; EBG receives two points; and Calvary and Saidnews are not credited with any points.<sup>42</sup> HCR is the tentative selectee in Group 36.

24. **NCE Reserved Allotment Group 37.** This group consists of two applications proposing service on vacant Channel 278C2 at Huntsville, Missouri, an allotment reserved by means of the third channel reservation standard. The two applicants, Lake Area Educational Broadcasting Foundation (“LAEBF”) and Community Broadcasting, Inc. (“CBI”), demonstrate compliance with the third channel reservation criteria<sup>43</sup> and proceed to the point system analysis. Neither applicant claims points as an established local applicant or as a statewide network. Each applicant certifies that it is entitled to two points for diversity of ownership. With respect to technical parameters, LAEBF’s proposed 60 dBu contour would encompass 6,452 square kilometers with a population of 68,866. CBI’s proposed 60 dBu contour would encompass 6,258 square kilometers with a population of 67,308. Neither applicant qualifies for points under the best technical proposal criterion because LAEBF’s proposal to reach the largest area and population does not exceed CBI’s proposed area and population by at least ten percent. Accordingly, LAEBF and CBI are each credited with a total of two points and proceed to a tie-breaker.

25. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. LAEBF certifies that it has 19 attributable interests; CBI certifies that it has 82 attributable interests in radio authorizations. LAEBF therefore prevails based on this first tie-breaker and is the tentative selectee in Group 37.

26. **NCE Reserved Allotment Group 38.** This group is comprised of five applications proposing service on vacant Channel 265C3 at Laurie, Missouri, an allotment reserved by means of the third channel reservation standard. The applicants are: Lake Area Educational Broadcasting Foundation (“LAEBF”), The Curators of the University of Missouri (“UM Curators”), Serendipity Educational Broadcasting, Inc. (“Serendipity”), Community Broadcasting, Inc. (“CBI”), and Real Community Radio

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(...continued from previous page)

EBG to 37,700 of the 80,216 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>42</sup> If the Commission had accepted Calvary’s or Saidnews’ claims of two points each for diversity of ownership, it would not have changed the outcome of this group. Specifically, HCR’s credited total of five points would have still exceeded Calvary’s and Saidnews’ claimed totals of two points each.

<sup>43</sup> See LAEBF and CBI Applications, Questions III(1), III(2), and associated exhibits. LAEBF’s 60 dBu contour encompasses 68,866 people, and its claimed aggregated first and second service is 31,820 people. CBI’s 60 dBu contour encompasses 67,308 people, and its claimed aggregated first and second service is 34,114 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

Network, Inc. (“RCRN”). Each applicant satisfies the third channel reservation criteria.<sup>44</sup> Accordingly, the entire group proceeds to the point hearing.

27. LAEBF and UM Curators each claim three points as established local applicants; the other three applicants do not. UM Curators, however, fails to submit any documentation to support its localism claim, and, accordingly, will not receive points under this criterion. Serendipity and RCRN each claim two points for diversity of ownership; LAEBF, UM Curators, and CBI do not claim points under this criterion. Serendipity fails to support its diversity claim, and, therefore, will not receive points under this criterion. None of the applicants claim points as statewide networks. With respect to technical parameters, LAEBF claims that its proposed 60 dBu contour would encompass 4,863 square kilometers and 77,008 people; UM Curators, 4,902 square kilometers and 82,163 people; Serendipity, 4,480 square kilometers and 74,515 people; CBI, 4,529 square kilometers and 76,184 people; and RCRN, 4,773 square kilometers and 74,770 people. No applicant is eligible for points under the best technical proposal criterion because UM Curators’s proposal to serve the largest area and population does not exceed LAEBF’s next best proposal by at least 10 percent. Accordingly, LAEBF is credited with a total of three points; RCRN receives two points; and UM Curators, Serendipity, and CBI are not credited with any points. LAEBF is therefore the tentative selectee in Group 38.

28. **NCE Reserved Allotment Group 39.** This group consists of six applications proposing service on vacant Channel 240C3 at Bozeman, Montana.<sup>45</sup> The applicants are: Grace Public Radio (“GPR”), Gallatin Valley Community Radio (“GVCR”), Guild of St. Peter Educational Association (“Guild”), Gallatin Educational Radio Association (“GERA”), Mount Ellis Academy (“MEA”), and Cedar Cove Broadcasting, Inc. (“CCB”). GVCR, Guild, and MEA certify that they are each entitled to points as established local applicants; the other three applicants do not claim points under this criterion. Each applicant claims two points for diversity of ownership with Guild’s claim based on a pledge to divest LPFM station KOFK-LP, Bozeman, Montana. GPR and GERA fail to submit documentation to support their respective diversity claims, and, accordingly, will not receive points under this criterion. None of the applicants claim points as statewide networks. With respect to technical parameters, GPR claims that its proposed 60 dBu contour would encompass 3,508 square kilometers with a population of 64,582; GVCR, 4,585 square kilometers and 65,588 people; Guild, 4,463 square kilometers and 72,326 people; GERA, 4,803 square kilometers and 72,788 people; MEA, 4,837 square kilometers and 73,592 people; and CCB, 5,480 square kilometers and 65,767 people. No applicant is eligible for any points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best proposal. Accordingly, GVCR, Guild, and MEA are credited with a total of five points each; CCB receives two points; and GPR and GERA are not credited with any points.<sup>46</sup> CCB, GPR, and GERA are therefore each eliminated, and GVCR, Guild, and MEA proceed to a tie-breaker.

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<sup>44</sup> See LAEBF, UM Curators, Serendipity, CBI, and RCRN Applications, Questions III(1), III(2), and associated exhibits. LAEBF claims that it would provide aggregated first and second NCE service to 14,881 of the 77,008 people encompassed within its 60 dBu contour; UM Curators to 9,527 of the 82,163 people; Serendipity to 25,200 of the 74,515 people; CBI to 15,837 of the 76,184 people; and RCRN to 10,494 of the 74,770 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>45</sup> The allotment was not reserved by means of the third channel reservation test.

<sup>46</sup> If the Commission had accepted GPR’s or GERA’s claims of two points each for diversity of ownership, it would not have changed the outcome of this group. Specifically, the credited totals of GVCR, Guild, and MEA of five points each would still have exceeded GPR’s and GERA’s claimed totals of two points each.

29. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. GVCR, Guild, and MEA certify that they each have no attributable interests in any radio authorizations.<sup>47</sup> Accordingly, we proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. GVCR, Guild, and MEA certify that they each have an attributable interest in one radio application. Guild’s certification, however, is incorrect. Guild should have listed the instant application and its one other application filed during the October 2007, NCE FM filing window.<sup>48</sup> Accounting for this error, Guild is therefore eliminated, and GVCR and MEA are thus each tentative selectees in Group 39 on a time-sharing basis.

30. **NCE Reserved Allotment Group 40.** This group is comprised of five applications proposing service on vacant Channel 237A at Dillsboro, North Carolina, an allotment reserved by means of the third channel reservation standard. The applicants are: Blue Ridge Broadcasting Corporation (“BRBC”), Western Carolina University (“WCU”), Network of Glory, Inc. (“NOG”), Toccoa Foundation, Inc. (“Toccoa”), and The Canary Coalition, Inc. (“Canary”). Each applicant demonstrates compliance with the third channel reservation criteria.<sup>49</sup> The entire group, therefore, proceeds to a point hearing.

31. WCU and Canary certify that each is eligible for points as an established local applicant; BRBC, NOG, and Toccoa do not claim points under this criterion. NOG and Canary are the only applicants to claim two points for diversity of ownership. NOG, however, fails to submit documentation to support its claim, and, accordingly, will not receive points under this criterion.<sup>50</sup> None of the applicants claim points as a statewide network. With respect to technical parameters, BRBC claims that its proposed 60 dBu contour would encompass 2,782 square kilometers with a population of 67,412; WCU, 2,445 square kilometers and 73,800 people; NOG, 1,212 square kilometers and 49,784 people; Toccoa, 2,469 square kilometers and 108,475 people; and Canary, 646 square kilometers and 28,396 people. No applicant is eligible for points under the best technical proposal criterion because no applicant proposes to serve the most area and population, at least 10 percent greater than the next best proposal.

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<sup>47</sup> Because Guild has pledged to divest LPFM station KOFK-LP, it may exclude the station from its count of attributable radio authorizations. *See supra* note 28.

<sup>48</sup> *See* FCC File No. BNPED-20071022ASF. Although it is essential that applicants make full and clear disclosure of all material facts in every application and filing with the Commission, the false statement here does not appear to have been made with the intention of deceiving the Commission. There is no evidence that Guild knowingly misstated its number of pending applications. Moreover, we note that in response to Question V(2) of FCC Form 340 (“pending applications”), other applicants neglected to list applications filed during the October 2007 and February 2010, filing windows, as directed. We caution Guild, however, to be attentive to its application certifications in the future because a false statement, even absent an intent to deceive, may constitute an actionable violation of Section 1.17 of the Rules. 47 C.F.R. § 1.17.

<sup>49</sup> *See* BRBC, WCU, NOG, Toccoa, and Canary Applications, Questions III(1), III(2), and associated exhibits. BRBC claims that it would provide aggregated first and second NCE service to 59,568 of the 67,412 people encompassed within its proposed 60 dBu contour; WCU to 62,158 of the 73,800 people; NOG to 47,812 of the 49,784 people; Toccoa to 47,992 of the 108,475 people; and Canary to 27,796 of the 28,396 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>50</sup> Although NOG certifies that it currently has no authorizations, it provides no indication that it timely adopted governing documents that would require it to maintain diversity in the future.

Accordingly, Canary is credited with a total of five points; WCU receives three points; and BRBC, NOG, and Toccoa are not credited with any points.<sup>51</sup> Canary is therefore the tentative selectee in Group 40.

32. **NCE Reserved Allotment Group 43.** This group consists of nine applications proposing service on vacant Channel 221A at Amherst, New York, an allotment reserved by means of the third channel reservation standard. The applicants are: JCM Radio of NY, Inc. (“JCM”), Medaille College (“Medaille”), Triangle Foundation, Inc. (“Triangle”), Helen M. Randall Memorial Baptist Church (“HRMBC”), Lockport Seventh-Day Adventist Church (“LSDA”), Calvary Chapel of the Niagara Frontier (“CCNF”), Hispanic Family Christian Network, Inc. (“HFCN”), Call Communications Group, Inc. (“Call”), and Smile FM (“Smile”). Each applicant satisfies the third channel reservation criteria,<sup>52</sup> and the entire group proceeds to a point hearing.

33. Medaille, HRMBC, LSDA, and CCNF certify that each is entitled to points as an established local applicant. JCM, Triangle, HFCN, Call, and Smile do not claim localism points. Each applicant claims two points for diversity of ownership with Triangle’s claim based on a pledge to divest LPFM station WWCC-LP. Triangle, however, has not shown that its governing documents limit its ability to acquire other stations in the same area after divesting the LPFM station. Similarly, JCM fails to support its diversity claim, and HRMBC failed to timely submit the requisite documentation to support its claim.<sup>53</sup> Accordingly, we will not award diversity points to Triangle, JCM, or HRMBC. None of the applicants claim points as a statewide network. With respect to technical parameters, JCM claims that its proposed 60 dBu contour would encompass 1,431 square kilometers with a population of 993,058; Medaille, 778 square kilometers and 599,375 people; Triangle, 1,574 square kilometers and 841,664 people; HRMBC, 1,513 square kilometers and 838,950 people; LSDA, 231 square kilometers and 426,349 people; CCNF, 793 square kilometers and 641,460 people; HFCN, 2,509 square kilometers and 990,687 people; Call, 852 square kilometers and 633,631 people; and Smile, 2,988 square kilometers and 1,037,907 people. No applicant is eligible for any points under the best technical proposal criterion because Smile’s proposal to serve the most area and population does not exceed HFCN’s next best area proposal and JCM’s next best population proposal by at least 10 percent. Accordingly, Medaille, LSDA,

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<sup>51</sup> If the Commission had accepted NOG’s claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, Canary’s credited total of five points would still have exceeded NOG’s claimed total of two points.

<sup>52</sup> See JCM, Medaille, Triangle, HRMBC, LSDA, CCNF, HFCN, Call, and Smile Applications, Questions III(1), III(2), and associated exhibits. JCM claims that it would provide aggregated first and second NCE service to 724,721 of the 993,058 people encompassed within its 60 dBu contour; Medaille to 133,037 of the 599,375 people; Triangle to 176,921 of the 841,664 people; HRMBC to 193,390 of the 838,950 people; LSDA to 81,550 of the 426,349 people; CCNF to 132,134 of the 641,460 people; HFCN to all 990,687 of the 990,687 people; Call to 182,689 of the 633,631 people; and Smile to 270,000 of the 1,037,907 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>53</sup> HRMBC initially certified that it qualified for points for diversity of ownership, but it failed to submit any documentation to support its claim. On April 7, 2010, over one month after the close of the reserved allotment filing window, HRMBC amended its application to submit supporting documentation. HRMBC’s post-filing window amendment is a prohibited attempt to enhance its comparative position and will not be considered. The Commission has repeatedly disallowed the late submission of requested information in comparative cases, finding that such an allowance would “inevitably lead to abuse of the Commission’s processes, applicant gamesmanship, and unfair advantage.” *Silver Springs Communications*, Memorandum Opinion and Order, 3 FCC Rcd 5049, 5050 (1988), *rev. denied*, 4 FCC Rcd 4917 (1989) (concluding that the rejection of an untimely filed notice of appearance in a comparative case is necessary in order to maintain the integrity of the Commission’s processes and to insure that an applicant’s gamesmanship does not result in an unfair advantage). See also *LRB Broadcasting*, Memorandum Opinion and Order, 8 FCC Rcd 3076 (1993).

and CCNF are credited with a total of five points each; HRMBC receives three points; HFCN, Call, and Smile are awarded two points each; and JCM and Triangle are not credited with any points. HRMBC, HFCN, Call, Smile, JCM, and Triangle are therefore each eliminated, and Medaille, LSDA, and CCNF proceed to a tie-breaker.

34. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. Medaille, LSDA, and CCNF certify that they each have no attributable interests in any radio authorizations. Accordingly, each applicant proceeds to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. Medaille, LSDA, and CCNF certify that they each have an attributable interest in one radio application. Accordingly, we proceed to the tie-breaker of last resort - mandatory time-sharing. Medaille, LSDA, and CCNF are thus each tentative selectees in Group 43 on a time-sharing basis.

35. **NCE Reserved Allotment Group 44.** This group consists of 11 applications proposing service on vacant Channel 273A at Rhinebeck, New York.<sup>54</sup> The applicants are: JCM Radio of NY, Inc. (“JCM”), PZK Hudson Foundation Radio, Inc. (“PZK”), Grace Public Radio (“GPR”), Birds of a Feather Media Limited (“BFML”), WMHT Educational Telecommunications (“WMHT”), Calvary Chapel of the Hudson Valley (“CCHV”), Counterpoint Communications, Inc. (“Counterpoint”), Foothills Public Radio, Inc. (“Foothills”), Christian Media Associates, Inc. (“CMA”), Marist College (“Marist”), and Somos La Llave del Futuro (“SLF”).

36. BFML, CCHV, CMA, Marist, and SLF each claim points as an established local applicant. JCM, PZK, GPR, WMHT, Counterpoint, and Foothills do not claim localism points. Each applicant, with the exception of WMHT, claims two points for diversity of ownership. JCM, PZK, GPR, and Foothills each fail to provide the requisite support for their diversity claims, and, accordingly, will not be credited with points under this criterion.<sup>55</sup> Marist is the only applicant to claim points as a statewide network. Such points, however, are only available to applicants that have not received two points for diversity of ownership.<sup>56</sup> Marist cannot receive points under both criteria. With respect to technical parameters, JCM claims that its proposed 60 dBu contour would encompass 3,556 square kilometers with a population of 380,491; PZK, 2,188 square kilometers and 238,173 people; GPR, 1,754 square kilometers and 244,425 people; BFML, 2,541 square kilometers and 308,751 people; WMHT, 2,570 square kilometers and 185,565 people; CCHV, 2,551 square kilometers and 190,851 people; Counterpoint, 2,314 square kilometers and 322,136 people; Foothills, 1,891 square kilometers and 150,339 people; CMA, 2,433 square kilometers and 301,183 people; Marist, 2,549 square kilometers and 310,047 people; and SLF, 2,229 square kilometers and 316,659 people. JCM qualifies for one point under the best technical proposal criterion because its proposal will serve at least 10 percent more area and population than WMHT’s next best area proposal and Counterpoint’s next best population proposal. Accordingly, BFML, CCHV, CMA, Marist, and SLF are credited with a total of five points each; Counterpoint receives two points; JCM is credited with one point; and PZK, GPR, WMHT, and Foothills

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<sup>54</sup> The allotment was not reserved by means of the third channel reservation test.

<sup>55</sup> Although JCM certifies that it currently has no attributable interests in any radio authorizations, it has not shown that its governing documents limit its ability to acquire other stations in the same area as the proposed allotment. PZK, GPR, and Foothills fail to provide any support for their respective diversity claims.

<sup>56</sup> See 47 C.F.R. § 73.7003(b)(3). Moreover, Marist does not submit any information to support its claim that it qualifies as a statewide network.

are not credited with any points.<sup>57</sup> Counterpoint, JCM, PZK, GPR, WMHT, and Foothills are therefore each eliminated, and BFML, CCHV, CMA, Marist, and SLF proceed to a tie-breaker.

37. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. BFML, CCHV, CMA, Marist, and SLF certify that they each have no attributable interests in any radio authorizations. Accordingly, we proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. Marist certifies that it has an attributable interest in two radio applications; BFML, CCHV, CMA, and SLF certify that they each have an attributable interest in one radio application. Accordingly, Marist is eliminated, and we proceed to the tie-breaker of last resort - mandatory time-sharing. BFML, CCHV, CMA, and SLF are thus each tentative selectees in Group 44 on a time-sharing basis.

38. **NCE Reserved Allotment Group 45.** This group consists of five applications proposing service on vacant Channel 229A at Cordell, Oklahoma, an allotment reserved by means of the third channel reservation standard. The applicants are: Grace Public Radio (“GPR”), Better Public Broadcasting Association (“BPBA”), Serendipity Educational Broadcasting, Inc. (“Serendipity”), Hammock Educational and Environmental Community Services (“Hammock”), and Norman Unitarian Universalist Fellowship (“NUUF”). Each applicant satisfies the third channel reservation criteria,<sup>58</sup> and the group proceeds to a point hearing.

39. None of the applicants claim points as an established local applicant. Each applicant claims two points for diversity of ownership. GPR and Serendipity fail to support their respective diversity claims, and, accordingly, will not receive points under this criterion. Hammock is the only applicant to claim points as a statewide network. Such points, however, are only available to applicants that have not received two points for diversity of ownership.<sup>59</sup> Hammock cannot receive points under both criteria. With respect to technical parameters, GPR claims that its proposed 60 dBu contour would encompass 2,537 square kilometers with a population of 20,434; BPBA, 2,566 square kilometers and 28,603 people; Serendipity, 2,514 square kilometers and 20,344 people; Hammock, 2,486 square kilometers and 20,108 people; and NUUF, 2,497 square kilometers and 20,245 people. No applicant is eligible for points under the best technical proposal criterion because BPBA’s proposal to serve the largest area and population does not exceed the area and population of GPR’s next best proposal by at least 10 percent. Accordingly, BPBA, Hammock, and NUUF are credited with a total of two points each; GPR and Serendipity are not credited with any points.<sup>60</sup> GPR and Serendipity are therefore each eliminated; BPBA, Hammock, and NUUF proceed to a tie-breaker.

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<sup>57</sup> If the Commission had accepted the claims of JCM, PZK, GPR, and Foothills for two points each for diversity of ownership, it would not have changed the outcome of this group. BFML, CCHV, CMA and SLF would still have prevailed as the tentative selectees based on their claimed totals of five points each.

<sup>58</sup> See GPR, BPBA, Serendipity, Hammock, and NUUF Applications, Questions III(1), III(2), and associated exhibits. GPR claims that it would provide aggregated first and second NCE service to 10,575 of the 20,434 people encompassed within its 60 dBu contour; BPBA to 4,028 of the 28,603 people; Serendipity to all 20,344 of the 20,344 people; Hammock to 5,129 of the 20,108 people; and NUUF to 4,978 of the 20,245 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>59</sup> See 47 C.F.R. § 73.7003(b)(3). Moreover, Hammock does not submit any information to support its claim that it qualifies as a statewide network.

<sup>60</sup> If the Commission had accepted GPR’s or Serendipity’s claims of two points each for diversity of ownership, it would not have changed the outcome of this group. Specifically, NUUF would have still prevailed as the tentative selectee under the first tie-breaker criterion.

40. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. BPBA certifies that it has an attributable interest in six radio authorizations. Hammock and NUUF certify that they each have no attributable interests in any radio authorizations. Hammock and NUUF's certifications, however, are inaccurate. Hammock and NUUF should have amended their respective applications to disclose two authorizations and one authorization, respectively.<sup>61</sup> Accounting for this error, NUUF therefore prevails based on this first tie-breaker and is the tentative selectee in Group 45.

41. **NCE Reserved Allotment Group 46.** This group consists of two applications proposing service on vacant Channel 286A at Weatherford, Oklahoma, an allotment reserved by means of the third channel reservation standard. The two applicants, Grace Public Radio ("GPR") and Better Public Broadcasting Association ("BPBA"), demonstrate compliance with the third channel reservation criteria<sup>62</sup> and proceed to the point system analysis. Neither applicant claims points as an established local applicant or as a statewide network. Each applicant certifies that it is entitled to two points for diversity of ownership. GPR and BPBA, however, fail to support their respective diversity claims, and, accordingly, neither will be awarded points under this criterion. With respect to technical parameters, GPR's proposed 60 dBu contour would encompass 2,539 square kilometers with a population of 28,607. BPBA's proposed 60 dBu contour would encompass 2,191 square kilometers with a population of 30,046. Neither applicant qualifies for points under the best technical proposal criterion because neither proposal will serve at least 10 percent more area and population than the other. Accordingly, GPR and BPBA are each not credited with any points, and the applicants proceed to a tie-breaker.

42. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. GPR certifies that it has seven attributable interests; BPBA certifies that it has six attributable interests in radio authorizations. BPBA therefore prevails based on this first tie-breaker and is the tentative selectee in Group 46.

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<sup>61</sup> Specifically, Hammock should have amended its application to reflect that it is the licensee of KFXH(FM), Marlow, Oklahoma, and the permittee of WDXZ(FM), Palm Coast, Florida (*see* FCC File No. BNPED-20071018ASP, granted December 13, 2010), and, accordingly, has an attributable interest in two radio authorizations. NUUF should have updated its application to reflect that it is now the permittee of KVOY(FM), Dibble, Oklahoma (*see* FCC File No. BNPED-20071019ASV, granted July 21, 2010), and, accordingly, has an attributable interest in one radio authorization. All Commission applicants are responsible for the continuing accuracy of their applications, and therefore, must amend pending applications whenever the information furnished is no longer substantially accurate and complete. NCE applicants must report "substantial and significant" changes, including changes with the potential to reduce their comparative positions under the point system. Information generally must be reported within 30 days of the change. *See* 47 C.F.R. § 1.65. [Although we find no evidence that Hammock and NUUF intentionally concealed information or had any motive to do so, we remind the applicants of their obligation under Section 1.65 of the Rules to update their applications to report any significant changes, including any points or tie-breaker factors for which they may no longer qualify due to changed circumstances. *See David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253 (D.C. Cir. 1991) (*citing Valley Broadcasting Co.*, Decision, 4 FCC Rcd 2611, 2618 (Rev. Bd. 1989) (violation of the reporting requirements of Section 1.65 is disqualifying only if evidence indicates that the applicant intended to conceal information from the Commission, or if the reporting violations are so numerous and serious as to undermine the applicant's responsibility to be a licensee).

<sup>62</sup> *See* GPR and BPBA Applications, Questions III(1), III(2), and associated exhibits. GPR's 60 dBu contour encompasses 28,607 people, and its claimed aggregated first and second service is 7,107 people. BPBA's 60 dBu contour encompasses 30,046 people, and its claimed aggregated first and second service is 3,363 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.



43. **NCE Reserved Allotment Group 47.** This group consists of six applications proposing service on vacant Channel 283A at Wynnewood, Oklahoma, an allotment reserved by means of the third channel reservation standard. The applicants are: Better Public Broadcasting Association (“BPBA”), Serendipity Educational Broadcasting, Inc. (“Serendipity”), Wynnewood Community Radio Association (“WCRA”), Hispanic Family Christian Network, Inc. (“HFCN”), Norman Unitarian Universalist Fellowship (“NUUF”), and Main Street Pauls Valley, Inc. (“MSPV”). Each applicant satisfies the third channel reservation criteria,<sup>63</sup> and the entire group proceeds to a point hearing.

44. WCRA and MSPV certify eligibility for three points each as established local applicants; the other four applicants do not claim points under this criterion. Each applicant claims two points for diversity of ownership. BPBA and Serendipity fail to submit documentation to support their respective diversity claims, and, accordingly, neither will receive points under this criterion. WCRA is the only applicant to claim points as a statewide network. Such points, however, are only available to applicants that have not received two points for diversity of ownership.<sup>64</sup> WCRA cannot receive points under both criteria. With respect to technical parameters, BPBA claims that its proposed 60 dBu contour would encompass 953 square kilometers with a population of 17,161; Serendipity, 1,914 square kilometers and 27,850 people; WCRA, 369 square kilometers and 31,596 people; HFCN, 3,610 square kilometers and 30,021 people; NUUF, 2,279 square kilometers and 26,763 people; and MSPV, 2,482 square kilometers and 29,006 people. No applicant is eligible for any points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best proposal. Accordingly, WCRA and MSPV are credited with a total of five points each; HFCN and NUUF receive two points each; and BPBA and Serendipity are not credited with any points.<sup>65</sup> HFCN, NUUF, BPBA, and Serendipity are therefore each eliminated, and WCRA and MSPV proceed to a tie-breaker.

45. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. WCRA and MSPV certify that they each have no attributable interests in any radio authorizations. Accordingly, WCRA and MSPV proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. MSPV certifies that it has an attributable interest in one radio application. WCRA certifies that it has no attributable interest in any radio application. WCRA’s certification, however, is incorrect. WCRA should have listed the instant application filed during the reserved allotment window.<sup>66</sup> Accounting for this error, we proceed to the tie-

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<sup>63</sup> See BPBA, Serendipity, WCRA, HFCN, NUUF, and MSPV Applications, Questions III(1), III(2), and associated exhibits. BPBA claims that it would provide aggregated first and second NCE service to 5,334 of the 17,161 people encompassed within its 60 dBu contour; Serendipity to 27,509 of the 27,850 people; WCRA to 15,385 of the 31,596 people; HFCN to 16,140 of the 30,021 people; NUUF to 20,793 of the 26,763 people; and MSPV to 21,169 of the 29,006 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>64</sup> See 47 C.F.R. § 73.7003(b)(3). Moreover, WCRA does not submit any information to support its claim that it qualifies as a statewide network.

<sup>65</sup> If the Commission had accepted BPBA’s or Serendipity’s claims of two points each for diversity of ownership, it would not have changed the outcome of this group. Specifically, the credited totals of WCRA and MSPV of five points each would still have exceeded BPBA’s and Serendipity’s claimed totals of two points each.

<sup>66</sup> Although it is essential that applicants make full and clear disclosure of all material facts in every application and filing with the Commission, there is no evidence that WCRA knowingly misstated its number of pending applications. We caution WCRA, however, to be attentive to application certifications in the future, because a false

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breaker of last resort - mandatory time-sharing. WCRA and MSPV are thus each tentative selectees in Group 47 on a time-sharing basis.

46. **NCE Reserved Allotment Group 48.** This group consists of seven applications proposing service on vacant Channel 252C3 at Dallas, Oregon, an allotment reserved by means of the third channel reservation standard. The applicants are: Calvary Chapel of McMinnville, Inc. (“CCM”), Dallas Seventh-Day Adventist Church (“DSDA”), Grace Public Radio (“GPR”), Mano a Mano Family Center (“Mano”), Centro Cristiano Vida Abundante, Inc. (“CCVA”), Capital Community Television, Inc. (“CCT”), and Hispanic Family Christian Network, Inc. (“HFCN”). Each applicant satisfies the third channel reservation criteria,<sup>67</sup> and the entire group proceeds to a point hearing.

47. CCM, DSDA, Mano, and CCT each claim points as an established local applicant; GPR, CCVA, and HFCN do not claim points under this criterion. Each applicant claims two points for diversity of ownership with CCM’s claim based on a pledge to divest LPFM station KKJC-LP, McMinnville, Oregon. GPR fails to submit documentation to support its diversity claim, and, accordingly, will not receive points under this criterion. CCT is the only applicant to claim points as a statewide network. Such points, however, are only available to applicants that have not received two points for diversity of ownership.<sup>68</sup> CCT cannot receive points under both criteria. With respect to technical parameters, CCM claims that its proposed 60 dBu contour would encompass 4,806 square kilometers with a population of 494,169; DSDA, 5,440 square kilometers and 510,240 people; GPR, 4,874 square kilometers and 145,829 people; Mano, 4,844 square kilometers and 480,255 people; CCVA, 4,603 square kilometers and 488,778 people; CCT, 4,900 square kilometers and 482,003 people; and HFCN, 4,360 square kilometers and 464,345 people. No applicant is eligible for any points under the best technical proposal criterion because DSDA’s proposal to serve the largest area and population does not exceed CCT’s next best area proposal and CCM’s next best population proposal by at least 10 percent. Accordingly, CCM, DSDA, Mano, and CCT are credited with a total of five points each; CCVA and HFCN receive two points each; and GPR is not credited with any points.<sup>69</sup> CCVA, HFCN, and GPR are therefore each eliminated, and CCM, DSDA, Mano, and CCT proceed to a tie-breaker.

48. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. CCM, DSDA, Mano, and CCT certify that they each have no attributable interests in any radio

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statement, even absent an intent to deceive, may constitute an actionable violation of Section 1.17 of the Rules. *See also supra* note 48.

<sup>67</sup> *See* CCM, DSDA, GPR, Mano, CCVA, CCT, and HFCN Applications, Questions III(1), III(2), and associated exhibits. CCM claims that it would provide aggregated first and second NCE service to 172,604 of the 494,169 people encompassed within its 60 dBu contour; DSDA to 258,594 of the 510,240 people; GPR to 67,074 of the 145,829 people; Mano to 175,273 of the 480,255 people; CCVA to 115,498 of the 488,778 people; CCT to 175,176 of the 482,003 people; and HFCN to all 464,345 of the 464,345 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>68</sup> *See* 47 C.F.R. § 73.7003(b)(3). Moreover, CCT does not submit any information to support its claim that it qualifies as a statewide network.

<sup>69</sup> If the Commission had accepted GPR’s claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, the credited totals of CCM, DSDA, Mano, and CCT of five points each would still have exceeded GPR’s claimed total of two points.

authorizations.<sup>70</sup> Accordingly, CCM, DSDA, Mano, and CCT proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. CCM, DSDA, Mano, and CCT certify that they each have an attributable interest in one radio application. Accordingly, we proceed to the tie-breaker of last resort - mandatory time-sharing. CCM, DSDA, Mano, and CCT are thus each tentative selectees in Group 48 on a time-sharing basis.

49. **NCE Reserved Allotment Group 49.** This group consists of two applications proposing service on vacant Channel 251C1 at Madras, Oregon, an allotment reserved by means of the third channel reservation standard. The applicants, Educational Broadcast Service (“EBS”) and Tool Shed PDX (“Tool”), each satisfy the requisite third channel reservation criteria.<sup>71</sup> Neither applicant claims to be eligible for points as an established local applicant. Each applicant claims two points for diversity of ownership. EBS, however, does not provide the requisite support for its diversity claim, and, accordingly, will not receive points under this criterion.<sup>72</sup> Neither applicant claims points as a statewide network. With respect to technical parameters, EBS’s proposed 60 dBu contour would encompass 16,594 square kilometers with a population of 52,271. Tool’s proposed 60 dBu contour would encompass 9,816 square kilometers with a population of 21,970. EBS qualifies for two points under the best technical proposal criterion because its proposal will serve at least 25 percent more area and population than Tool’s proposal. Accordingly, EBS and Tool are each credited with a total of two points and proceed to a tie-breaker.

50. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. EBS certifies that it has one attributable interest; Tool certifies that it has no attributable interests in any radio authorizations. Tool therefore prevails based on this first tie-breaker and is the tentative selectee in Group 49.

51. **NCE Reserved Allotment Group 50.** This group consists of five applications proposing service on vacant Channel 268C3 at The Dalles, Oregon.<sup>73</sup> The applicants are: Centro Familiar Cristiano (“CFC”), Radio Bilingue, Inc. (“RBI”), Ondas de Vida Network, Inc. (“OVN”), The Dalles Seventh-Day Adventist Church (“DSDAC”), and Cascade Community Radio (“Cascade”). DSDAC certifies that it is entitled to points as an established local applicant; the other four applicants do not claim points under this criterion. Each applicant claims two points for diversity of ownership. OVN is the only applicant to claim points as a statewide network. Such points, however, are only available to applicants that have not received two points for diversity of ownership.<sup>74</sup> OVN cannot receive points

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<sup>70</sup> Because CCM has pledged to divest LPFM station KKJC-LP, it may exclude the station from its count of attributable radio authorizations. *See supra* note 28.

<sup>71</sup> *See* EBS and Tool Applications, Questions III(1), III(2), and associated exhibits. EBS’s 60 dBu contour encompasses 52,271 people, and its claimed aggregated first and second NCE service is 47,385 people. Tool’s 60 dBu contour encompasses 21,970 people, and its claimed aggregated first and second NCE service is 2,198 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>72</sup> Although EBS certifies that its proposed station will not overlap the principal community contour of its authorized station, EBS provides no indication that it timely adopted governing documents that would require it to maintain diversity in the future.

<sup>73</sup> The allotment was not reserved by means of the third channel reservation test.

<sup>74</sup> *See* 47 C.F.R. § 73.7003(b)(3). Moreover, OVN does not submit any information to support its claim that it qualifies as a statewide network.

under both criteria. With respect to technical parameters, CFC claims that its proposed 60 dBu contour would encompass 4,834 square kilometers with a population of 32,755; RBI, 5,476 square kilometers and 52,158 people; OVN, 4,774 square kilometers and 54,131 people; DSDAC, 5,426 square kilometers and 45,710 people; and Cascade, 3,969 square kilometers and 54,356 people. No applicant is eligible for any points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best proposal. Accordingly, DSDAC is credited with a total of five points; and CFC, RBI, OVN, and Cascade are awarded two points each. DSDAC is therefore the tentative selectee in Group 50.

52. **NCE Reserved Allotment Group 51.** This group is comprised of five applications proposing service on vacant Channel 298A at Liberty, Pennsylvania, an allotment reserved by means of the third channel reservation standard. The applicants are: Calvary Chapel of Russell (“CC-Russell”), Harvest Family Fellowship of the Assemblies of God (“Harvest”), The Williamsport Guardian, Inc. (“Williamsport”), Cedar Cove Broadcasting, Inc. (“CCB”), and Northeastern Pennsylvania Educational Television Association (“NPETA”). Each applicant satisfies the third channel reservation criteria,<sup>75</sup> and the entire group, therefore, proceeds to the point hearing.

53. Harvest and Williamsport each claim three points as established local applicants; CC-Russell, CCB, and NPETA do not. Harvest failed to timely support its localism claim, and, accordingly, will not receive points under this criterion.<sup>76</sup> Each applicant claims two points for diversity of ownership. Harvest and NPETA, however, fail to adequately support their respective diversity claims, and, therefore, will not receive points under this criterion.<sup>77</sup> None of the applicants claim points as statewide networks. With respect to technical parameters, CC-Russell claims that its proposed 60 dBu contour would encompass 2,551 square kilometers with a population of 88,325; Harvest, 2,308 square kilometers and 85,548 people; Williamsport, 2,470 square kilometers and 69,453 people; CCB, 2,237 square kilometers and 84,096 people; and NPETA, 2,484 square kilometers and 65,760 people. No applicant is eligible for points under the best technical proposal criterion because CC-Russell’s proposal to serve the largest area and population does not exceed NPETA’s next best area proposal and Harvest’s next best population proposal by at least 10 percent. Accordingly, Williamsport is credited with a total of five points; CC-Russell and CCB each receive two points; and Harvest and NPETA are not credited with any points. Williamsport is therefore the tentative selectee in Group 51.

54. **NCE Reserved Allotment Group 52.** This group is comprised of six applications proposing service on vacant Channel 227A at Susquehanna, Pennsylvania, an allotment reserved by means of the third channel reservation standard. The applicants are: JCM Radio of NY, Inc. (“JCM”), Calvary Chapel of Russell (“CC-Russell”), Montrose Broadcasting Corporation (“Montrose”), Davis

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<sup>75</sup> See CC-Russell, Harvest, Williamsport, CCB, and NPETA Applications, Questions III(1), III(2), and associated exhibits. CC-Russell claims that it would provide aggregated first and second NCE service to 14,643 of the 88,325 people encompassed within its 60 dBu contour; Harvest to 10,967 of the 85,548 people; Williamsport to 14,169 of the 69,453 people; CCB to 13,377 of the 84,096 people; and NPETA to 21,100 of the 65,760 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>76</sup> Harvest initially certified that it qualified for points for localism and diversity of ownership, but failed to submit any documentation to support its claims. On April 5, 2010, over one month after the close of the reserved allotment filing window, Harvest amended its application to submit supporting documentation. Harvest’s post-filing window amendment is a prohibited attempt to enhance its comparative position and will not be considered. See *supra* note 53.

<sup>77</sup> As noted above, Harvest failed to timely support its claim. See *supra* note 76. NPETA provides no support for its diversity claim.

College (“Davis”), The Broome County Urban League, Inc. (“Broome”), and Redeemer Broadcasting, Inc. (“Redeemer”). JCM fails to satisfy the third channel reservation criteria, and, accordingly, is eliminated.<sup>78</sup> The remaining five applicants each satisfy the reservation criteria,<sup>79</sup> and proceed to a point system analysis.

55. Montrose, Davis, and Broome each certify eligibility for three points as established local applicants. CC-Russell and Redeemer do not claim points under this criterion. Each applicant, with the exception of Montrose, claims two points for diversity of ownership. Davis fails to support its claim, and, therefore, will not be awarded diversity points.<sup>80</sup> None of the applicants claim points as a statewide network. With respect to technical parameters, CC-Russell claims that its proposed 60 dBu contour would encompass 2,501 square kilometers with a population of 169,223; Montrose, 2,509 square kilometers and 73,172 people; Davis, 2,345 square kilometers and 43,868 people; Broome, 2,407 square kilometers and 175,541 people; and Redeemer, 2,268 square kilometers and 170,320 people. No applicant is eligible for points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best proposal. Accordingly, Broome is credited with a total of five points; Montrose and Davis receive three points each; and CC-Russell and Redeemer are each awarded two points. Broome is therefore the tentative selectee in Group 52.

56. **NCE Reserved Allotment Group 53.** This group consists of five applications proposing service on vacant Channel 256C3 at Barnwell, South Carolina, an allotment reserved by means of the third channel reservation standard. The applicants are: Barnwell Community Radio (“BCR”), Richburg Educational Broadcasters, Inc. (“Richburg”), St. Andrew Roman Catholic Church (“SARCC”), Impact Church (“Impact”), and Network of Glory (“NOG”). Each applicant satisfies the third channel reservation criteria<sup>81</sup> and proceeds to a point system analysis.

57. BCR, SARCC, and Impact claim three points each as established local applicants; Richburg and NOG do not. Impact fails to provide any documentation to support its localism claim, and, accordingly, will not receive points under this criterion. Each applicant claims two points for diversity of ownership. Impact and NOG, however, fail to support their respective diversity claims and will not

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<sup>78</sup> JCM certifies that it will provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people. According to its application, however, it will provide aggregated first and second NCE service to only 9,791 of the 172,941 people encompassed within its proposed 60 dBu contour, which is less than ten percent.

<sup>79</sup> See CC-Russell, Montrose, Davis, Broome, and Redeemer Applications, Questions III(1), III(2), and associated exhibits. CC-Russell claims that it would provide aggregated first and second NCE service to 16,990 of the 169,223 people encompassed within its 60 dBu contour; Montrose to 18,926 of the 73,172 people; Davis to 23,394 of the 43,868 people; Broome to 18,365 of the 175,541 people; and Redeemer to 40,831 of the 170,320 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>80</sup> Although Davis certifies that it currently has no authorizations, Davis provides no indication that it timely adopted governing documents that would require it to maintain diversity in the future.

<sup>81</sup> See BCR, Richburg, SARCC, Impact, and NOG Applications, Questions III(1), III(2), and associated exhibits. BCR claims that it would provide aggregated first and second NCE service to 37,852 of the 95,992 people encompassed within its 60 dBu contour; Richburg to 39,491 of the 103,687 people; SARCC to 36,032 of the 102,798 people; Impact to 43,511 of the 64,899 people; and NOG to 35,983 of the 109,555 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

receive points under this criterion.<sup>82</sup> Impact is the only applicant to claim points as a statewide network. It fails, however, to submit any documentation to support its claim, and, accordingly, will not receive points under this criterion. With respect to technical parameters, BCR claims that its proposed 60 dBu contour would encompass 4,719 square kilometers with a population of 95,992; Richburg, 4,803 square kilometers and 103,687 people; SARCC, 4,783 square kilometers and 102,798 people; Impact, 644 square kilometers and 64,899 people; and NOG, 4,853 square kilometers and 109,555 people. No applicant is eligible for points under the best technical proposal criterion because NOG's proposal to serve the largest area and population does not exceed Richburg's next best proposal by at least 10 percent. Accordingly, BCR and SARCC are each credited with a total of five points; Richburg receives two points; and Impact and NOG are not credited with any points. Richburg, Impact, and NOG are therefore each eliminated, and BCR and SARCC proceed to a tie-breaker.

58. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. BCR and SARCC certify that they each have no attributable interests in any radio authorizations. Accordingly, we proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. SARCC certifies that it has an attributable interest in one radio application. BCR certifies that it has no attributable interest in any radio application. BCR's certification, however, is incorrect. BCR should have listed the instant application filed during the reserved allotment window.<sup>83</sup> Accordingly, we proceed to the tie-breaker of last resort - mandatory time-sharing. BCR and SARCC are thus each tentative selectees in Group 53 on a time-sharing basis.

59. **NCE Reserved Allotment Group 54.** This group consists of seven applications proposing service on vacant Channel 240A at Burnet, Texas, an allotment reserved by means of the third channel reservation standard. The applicants are: The University of Texas at Austin ("UT Austin"), Penfold Communications, Inc. ("Penfold"), Austin Airwaves, Inc. ("AAI"), Serendipity Educational Broadcasting, Inc. ("Serendipity"), Camp Peniel, Inc. ("Peniel"), Community Broadcasting, Inc. ("CBI"), and Burnet Bible Church ("BBC"). Each applicant satisfies the third channel reservation criteria,<sup>84</sup> and the entire group proceeds to a point hearing.

60. UT Austin, Peniel, and BBC certify that each is entitled to points as an established local applicant. Penfold, AAI, Serendipity, and CBI do not claim localism points. Each applicant claims two points for diversity of ownership with BBC's claim based on a pledge to divest LPFM station KFGG-LP, Marble Falls, Texas. Serendipity fails to submit documentation to support its diversity claim, and, accordingly, will not receive points under this criterion. None of the applicants claim points as a

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<sup>82</sup> Although Impact and NOG each certifies it currently has no authorizations, neither provides any indication that it timely adopted governing documents that would require the maintenance of diversity in the future.

<sup>83</sup> Although it is essential that applicants make full and clear disclosure of all material facts in every application and filing with the Commission, there is no evidence that BCR knowingly misstated the number of pending applications. We, however, caution BCR to be attentive to application certifications in the future, because a false statement, even absent an intent to deceive, may constitute an actionable violation of Section 1.17 of the Rules. *See also supra* note 48.

<sup>84</sup> *See* UT Austin, Penfold, AAI, Serendipity, Peniel, CBI, and BBC Applications, Questions III(1), III(2), and associated exhibits. UT Austin claims that it would provide aggregated first and second NCE service to 17,881 of the 29,259 people encompassed within its 60 dBu contour; Penfold to 17,950 of the 29,527 people; AAI to 17,884 of the 29,328 people; Serendipity to 14,347 of the 29,621 people; Peniel to 17,811 of the 29,033 people; CBI to 11,605 of the 26,954 people; and BBC to 12,526 of the 30,732 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

statewide network. With respect to technical parameters, UT Austin claims that its proposed 60 dBu contour would encompass 2,463 square kilometers with a population of 29,259; Penfold, 2,543 square kilometers and 29,527 people; AAI, 2,511 square kilometers and 29,328 people; Serendipity, 2,404 square kilometers and 29,621 people; Peniel, 2,436 square kilometers and 29,033 people; CBI, 2,445 square kilometers and 26,954 people; and BBC, 2,544 square kilometers and 30,732 people. No applicant is eligible for any points under the best technical proposal criterion because BBC's proposal to serve the most area and population does not exceed Penfold's next best area proposal and Serendipity's next best population proposal by at least 10 percent. Accordingly, UT Austin, Peniel, and BBC are credited with a total of five points; Penfold, AAI, and CBI are awarded two points each; and Serendipity is not credited with any points.<sup>85</sup> Penfold, AAI, CBI, and Serendipity are therefore each eliminated, and UT Austin, Peniel, and BBC proceed to a tie-breaker.

61. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. UT Austin certifies that it has an attributable in four radio authorizations; Peniel and BBC certify that they each have no attributable interests in any radio authorizations.<sup>86</sup> Accordingly, UT Austin is eliminated, and Peniel and BBC proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. BBC certifies they it has an attributable interest in one radio application. Peniel certifies that it has no attributable interest in any radio application. Peniel's certification, however, is incorrect. Peniel should have listed the instant application filed during the window.<sup>87</sup> Accordingly, we proceed to the tie-breaker of last resort - mandatory time-sharing. Peniel and BBC are thus each tentative selectees in Group 54 on a time-sharing basis.

62. **NCE Reserved Allotment Group 55.** This group consists of three applications proposing service on vacant Channel 248C2 at Denver City, Texas, an allotment reserved by means of the third channel reservation standard. The applicants are: Oasis of Faith, Inc. ("Oasis"), Hispanic Family Christian Network, Inc. ("HFCN"), and Edgewater Broadcasting, Inc. ("Edgewater"). Each applicant satisfies the third channel reservation criteria,<sup>88</sup> and the group proceeds to a point hearing.

63. None of the applicants claim to be eligible for points as established local applicants or as statewide networks. Each applicant claims two points for diversity of ownership with the claim of Edgewater based on a pledge to divest FM translator station K283BC, Hobbs, New Mexico.<sup>89</sup> With

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<sup>85</sup> If the Commission had accepted Serendipity's claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, UT Austin's, Peniel's, and BBC's credited totals of five points each would have still exceeded Serendipity's claimed total of two points.

<sup>86</sup> Because BBC has pledged to divest LPFM station KFGG-LP, it may exclude the station from its count of attributable radio authorizations. *See supra* note 28.

<sup>87</sup> Although it is essential that applicants make full and clear disclosure of all material facts in every application and filing with the Commission, there is no evidence that Peniel knowingly misstated the number of pending applications. We, however, caution Peniel to be attentive to application certifications in the future, because a false statement, even absent an intent to deceive, may constitute an actionable violation of Section 1.17 of the Rules. *See also supra* note 48.

<sup>88</sup> *See* Oasis, HFCN, and Edgewater Applications, Questions III(1), III(2), and associated exhibits. Oasis claims that it would provide aggregated first and second NCE service to 34,893 of the 71,685 people encompassed within its 60 dBu contour; HFCN to 65,951 of the 73,305 people; and Edgewater to 19,014 of the 55,568 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>89</sup> Edgewater also pledges to divest its interest in its pending applications for FM translator stations at Hobbs and Lovington, New Mexico. *See* FCC File Nos. BNPFT-20030317HYF, 20030317HYU, and 20030317FCJ.

respect to technical parameters, Oasis claims that its proposed 60 dBU contour would encompass 8,473 square kilometers with a population of 71,685; HFCN, 15,322 square kilometers and 73,305 people; and Edgewater, 3,696 square kilometers and 55,568 people. No applicant is eligible for points under the best technical proposal criterion because HFCN's proposal to serve the largest area and population does not exceed both Oasis's next best area proposal and Oasis's next best population proposal by at least 10 percent. Accordingly, Oasis, HFCN, and Edgewater are each credited with a total of two points, and the group proceeds to a tie-breaker.

64. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. Oasis and HFCN certify that they each have one attributable interest; Edgewater certifies that it has 230 attributable interests in radio authorizations. Edgewater is therefore eliminated, and Oasis and HFCN proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. Oasis certifies that it has an attributable interest in eight radio applications; HFCN certifies that it has an attributable interest in 33 radio applications. Oasis therefore prevails on this second tie-breaker and is the tentative selectee in Group 55.

65. **NCE Reserved Allotment Group 58.** This group consists of five applications proposing service on vacant Channel 296A at Shenandoah, Virginia, an allotment reserved by means of the third channel reservation standard. The applicants are: Grace Public Radio ("GPR"), Familia Dei ("FD"), James Madison University Board of Visitors ("JMU Board"), Holy Family Communications ("HFC"), and Fairfield Center ("Fairfield"). Each applicant satisfies the third channel reservation criteria,<sup>90</sup> and the group proceeds to a point hearing.

66. FD, JMU Board, and Fairfield each certify eligibility for points as an established local applicant. GPR and HFC do not claim points under this criterion. Each applicant, with the exception of JMU Board, claims two points for diversity of ownership. GPR fails to support its diversity claim, and, accordingly, will not receive points under this criterion. None of the applicants claim points as statewide networks. With respect to technical parameters, GPR claims that its proposed 60 dBU contour would encompass 2,209 square kilometers with a population of 117,024 people; FD, 2,984 square kilometers and 149,494 people; JMU Board, 2,985 square kilometers and 158,145 people; HFC, 1,401 square kilometers and 39,448 people; and Fairfield, 2,331 square kilometers and 84,060 people. No applicant is eligible for points under the best technical proposal criterion because JMU Board's proposal to serve the largest area and population does not exceed FD's next best proposal by at least 10 percent. Accordingly, FD and Fairfield are each credited with a total of five points; JMU Board receives three points; HFC is credited two points; and GPR is not credited with any points.<sup>91</sup> JMU Board, HFC, and GPR are therefore each eliminated, and FD and Fairfield proceed to a tie-breaker.

67. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. FD and Fairfield certify that they each have no attributable interests in any radio authorizations.

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<sup>90</sup> See GPR, FD, JMU Board, HFC, and Fairfield Applications, Questions III(1), III(2), and associated exhibits. GPR claims that it would provide aggregated first and second NCE service to 45,375 of the 117,024 people encompassed within its 60 dBU contour; FD to 34,080 of the 149,494 people; JMU Board to 33,865 of the 158,145 people; HFC to 27,077 of the 39,448 people; and Fairfield to 22,735 of the 84,060 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBU contour and to more than 2,000 people.

<sup>91</sup> If the Commission had accepted GPR's claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, FD's and Fairfield's credited totals of five points each would still have exceeded GPR's claimed total of two points.



Accordingly, we proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. FD and Fairfield certify that they each have an attributable interest in one radio application. Accordingly, we proceed to the tie-breaker of last resort - mandatory time-sharing. FD and Fairfield are thus each tentative selectees in Group 58 on a time-sharing basis.

68. **NCE Reserved Allotment Group 59.** This group consists of four applications proposing service on vacant Channel 226A at Charlotte Amalie, Virgin Islands.<sup>92</sup> The applicants are: V.I. Christian Ministries, Inc. (“VICM”), Family Educational Association, Inc. (“FEA”), Virgin Islands Public Television System (“VIPTS”), and Hammock Educational and Environmental Community Services (“Hammock”). Each applicant, with the exception of Hammock, certifies that it is entitled to points as an established local applicant. FEA fails to submit any documentation to support its claim, and, accordingly, will not receive points under this criterion. Each applicant claims two points for diversity of ownership. FEA fails to support its claim and will not be awarded diversity points. Hammock is the only applicant to claim points as a statewide network. Such points, however, are only available to applicants that have not received two points for diversity of ownership.<sup>93</sup> Hammock cannot receive points under both criteria. With respect to technical parameters, VICM claims that its proposed 60 dBu contour would encompass 162 square kilometers with a population of 57,246; FEA, 168 square kilometers and 57,246 people; VIPTS, 386 square kilometers and 57,246 people; and Hammock, 136 square kilometers and 55,378 people. No applicant is eligible for any points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best proposal. Accordingly, VICM and VIPTS are each credited with a total of five points; Hammock receives two points; and FEA is not credited with any points. Hammock and FEA are therefore each eliminated, and VICM and VIPTS proceed to a tie-breaker.

69. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. VICM and VIPTS certify that they each have no attributable interests in any radio authorizations. Accordingly, we proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. VICM and VIPTS certify that they each have an attributable interest in one radio application. Accordingly, we proceed to the tie-breaker of last resort - mandatory time-sharing. VICM and VIPTS are thus each tentative selectees in Group 59 on a time-sharing basis.

70. **NCE Reserved Allotment Group 60.** This group consists of three applications proposing service on vacant Channel 274C3 at Chewelah, Washington.<sup>94</sup> The applicants are: Grace Public Radio (“GPR”), Cor Christi (“Christi”), and Community Celebrations Inc. (“CCI”). CCI is the only applicant to certify that it is eligible for points as an established local applicant. Each applicant claims two points for diversity of ownership. GPR, however, fails to support its diversity claim, and, accordingly, will not be awarded points under this criterion. No applicant claims points as a statewide network. With respect to technical parameters, GPR claims that its proposed 60 dBu contour would encompass 4,787 square kilometers with a population of 25,715; Christi, 4,781 square kilometers and 20,086 people; and CCI, 4,755 square kilometers and 19,995 people. No applicant is eligible for points under the best technical proposal criterion because GPR’s proposal to serve the largest area and population does not exceed Christi’s next best proposal by at least 10 percent. Accordingly, CCI is

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<sup>92</sup> The allotment was not reserved by means of the third channel reservation test.

<sup>93</sup> See 47 C.F.R. § 73.7003(b)(3). Moreover, Hammock does not submit any information to support its claim that it qualifies as a statewide network.

<sup>94</sup> The allotment was not reserved by means of the third channel reservation test.

credited with a total of five points; Christi receives two points; and GPR is not credited with any points.<sup>95</sup> CCI is therefore the tentative selectee in Group 60.

71. **NCE Reserved Allotment Group 61.** This group is comprised of four applications proposing service on vacant Channel 233A at Oak Harbor, Washington, an allotment reserved by means of the third channel reservation standard. The applicants are: Friends of KEXP (“KEXP Friends”), Bible Broadcasting Network, Inc. (“BBN”), KWPA Whidbey Public Radio (“KWPA”), and Iglesia Pentecostal Visperia del Fin (“IPVF”). Each applicant demonstrates compliance with the third channel reservation criteria.<sup>96</sup> The entire group, therefore, proceeds to a point system analysis.

72. KWPA is the only applicant to certify that it is entitled to three points as an established local applicant. Each applicant claims two points for diversity of ownership. BBN, however, fails to support its diversity claim, and, accordingly, will not receive points under this criterion. None of the applicants claim points as statewide networks. With respect to technical parameters, KEXP Friends claims that its proposed 60 dBu contour would encompass 806 square kilometers with a population of 108,403; BBN, 308 square kilometers and 50,880 people; KWPA, 604 square kilometers and 80,178 people; and IPVF, 5,066 square kilometers and 210,717 people. IPVF qualifies for two points under the best technical proposal criterion because its proposal will serve at least 25 percent more area and population than KEXP Friends’ next best proposal. Accordingly, KWPA is credited with a total of five points; IPVF receives four points; KEXP Friends is awarded two points; and BBN is not credited with any points.<sup>97</sup> KWPA is therefore the tentative selectee in Group 61.

73. **NCE Reserved Allotment Group 62.** This group consists of four applications proposing service on vacant Channel 275A at Ashland, Wisconsin.<sup>98</sup> The applicants are: Grace Public Radio (“GPR”), State of Wisconsin – Educational Communications Board (“Wisconsin Board”), True North Community Outreach (“TNCO”), and Northland College (“Northland”). Wisconsin Board and Northland certify that they are each entitled to points as established local applicants; the other two applicants do not claim points under this criterion. Each applicant, with the exception of Wisconsin Board, claims two points for diversity of ownership. Northland’s claim is based on a pledge to divest LPFM station WRNC-LP, Ashland, Wisconsin. GPR fails to submit documentation to support its diversity claim, and, accordingly, will not receive points under this criterion. Wisconsin Board is the only applicant to claim points as a statewide network. With respect to technical parameters, GPR claims that its proposed 60 dBu contour would encompass 2,569 square kilometers with a population of 20,709; Wisconsin Board, 959 square kilometers and 16,981 people; TNCO, 2,522 square kilometers and 20,558 people; and Northland, 1,852 square kilometers and 20,648 people. No applicant is eligible for points under the best technical proposal criterion because GPR’s proposal to serve the largest area and

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<sup>95</sup> If the Commission had accepted GPR’s claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, CCI’s credited total of five points would still have exceeded GPR’s claimed total of two points.

<sup>96</sup> See KEXP Friends, BBN, KWPA, and IPVF Applications, Questions III(1), III(2), and associated exhibits. KEXP Friends claims that it would provide aggregated first and second NCE service to 57,261 of the 108,403 people encompassed within its 60 dBu contour; BBN to 40,777 of the 50,880 people; KWPA to 41,735 of the 80,178 people; and IPVF to all 210,717 of the 210,717 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>97</sup> If the Commission had accepted BBN’s claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, KWPA’s credited total of five points would have still exceeded BBN’s claimed total of two points.

<sup>98</sup> The allotment was not reserved by means of the third channel reservation test.

population does not exceed TNCO's next best area proposal and Northland's next best population proposal by at least 10 percent. Accordingly, Wisconsin Board and Northland are credited with a total of five points each; TNCO receives two points; and GPR is not credited with any points.<sup>99</sup> TNCO and GPR are therefore each eliminated, and Wisconsin Board and Northland proceed to a tie-breaker.

74. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. Wisconsin Board certifies that it has attributable interests in 33 radio authorizations; Northland certifies that it has no attributable interests in any radio authorizations.<sup>100</sup> Accordingly, Northland prevails on this first tie-breaker and is the tentative selectee in Group 62.

75. **NCE Reserved Allotment Group 63.** This group consists of three applications proposing service on vacant Channel 268C3 at Augusta, Wisconsin, an allotment reserved by means of the third channel reservation standard. The applicants are: Crossfire Incorporated ("Crossfire"), True North Community Outreach ("TNCO"), and Evangelical Broadcasting Group, Inc. ("EBG"). Each applicant satisfies the third channel reservation criteria,<sup>101</sup> and the group proceeds to a point hearing.

76. None of the applicants claim to be eligible for points as established local applicants or as statewide networks. Each applicant claims two points each for diversity of ownership. With respect to technical parameters, Crossfire claims that its proposed 60 dBu contour would encompass 4,706 square kilometers with a population of 64,797; TNCO, 4,843 square kilometers and 66,234 people; and EBG, 4,789 square kilometers and 65,913 people. No applicant is eligible for points under the best technical proposal criterion because TNCO's proposal to serve the largest area and population does not exceed EBG's next best proposal by at least 10 percent. Accordingly, Crossfire, TNCO, and EBG are each credited with a total of two points, and the group proceeds to a tie-breaker.

77. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. Crossfire and EBG certify that they each have one attributable interest; TNCO certifies that it has no attributable interest in any radio authorization. TNCO's certification, however, is inaccurate. TNCO should have amended its application to disclose one attributable interest.<sup>102</sup> Accounting for this error, Crossfire, TNCO, and EBG and EBG proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. TNCO certifies that it has an attributable interest in five radio applications; Crossfire certifies that it has four attributable applications;

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<sup>99</sup> If the Commission had accepted GPR's claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, the credited totals of Wisconsin Board and Northland of five points each would still have exceeded GPR's claimed total of two points.

<sup>100</sup> Because Northland has pledged to divest LPFM station WRNC-LP, it may exclude the station from its count of attributable radio authorizations. *See supra* note 28.

<sup>101</sup> *See* Crossfire, TNCO, and EBG Applications, Questions III(1), III(2), and associated exhibits. Crossfire claims that it would provide aggregated first and second NCE service to 31,347 of the 64,797 people encompassed within its 60 dBu contour; TNCO to 30,473 of the 66,234 people; and EBG to 31,486 of the 65,913 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>102</sup> TNCO should have updated its application to reflect that it is now the permittee of KXNK(FM), Berthold, North Dakota (*see* FCC File No. BNPED-20100226AFW, granted May 24, 2010), and, accordingly, has an attributable interest in one radio authorization. *See* 47 C.F.R. § 1.65; *see also supra* note 61.

and EBG certifies that it has an attributable interest in three radio applications. EBG therefore prevails on this second tie-breaker and is the tentative selectee in Group 63.

78. **NCE Reserved Allotment Group 65.** This group consists of four applications proposing service on vacant Channel 284A at Washburn, Wisconsin.<sup>103</sup> The applicants are: Grace Public Radio (“GPR”), State of Wisconsin – Educational Communications Board (“Wisconsin Board”), True North Community Outreach (“TNCO”), and Cedar Cove Broadcasting, Inc. (“CCB”). Wisconsin Board certifies that it is entitled to points as an established local applicant; the other three applicants do not claim points under this criterion. Each applicant, with the exception of Wisconsin Board, claims two points for diversity of ownership. GPR fails to submit documentation to support its diversity claim, and, accordingly, will not receive points under this criterion. Wisconsin Board is the only applicant to claim points as a statewide network. With respect to technical parameters, GPR claims that its proposed 60 dBu contour would encompass 2,569 square kilometers with a population of 20,709; Wisconsin Board, 2,025 square kilometers and 19,999 people; TNCO, 2,521 square kilometers and 20,558 people; and CCB, 1,715 square kilometers and 20,591 people. No applicant is eligible for points under the best technical proposal criterion because GPR’s proposal to serve the largest area and population does not exceed TNCO’s next best area proposal and CCB’s next best population proposal by at least 10 percent. Accordingly, Wisconsin Board is credited with a total of five points; TNCO and CCB are awarded two points each; and GPR is not credited with any points.<sup>104</sup> Wisconsin Board is therefore the tentative selectee in Group 65.

79. **NCE Reserved Allotment Group 66.** This group consists of five applications proposing service on vacant Channel 287A at St. Marys, West Virginia, an allotment reserved by means of the third channel reservation standard. The applicants are: Grace Public Radio (“GPR”), Araiza Revival Ministries, Inc. (“Araiza”), Parkersburg Catholic Schools Foundation, Inc. (“Parkersburg”), West Virginia Educational Broadcasting Authority (“WVEB”), and Serendipity Educational Broadcasting, Inc. (“Serendipity”). Each applicant satisfies the third channel reservation criteria.<sup>105</sup> The entire group, therefore, proceeds to a point hearing.

80. Araiza, Parkersburg, and WVEB certify that they are each entitled to points as established local applicants; GPR and Serendipity do not claim points under this criterion. WVEB fails to support its localism claim, and, accordingly, will not receive points under this criterion. Each applicant, with the exception of WVEB, claims two points for diversity of ownership. GPR and Serendipity fail to support their respective diversity claims, and, accordingly, will not receive points under this criterion. None of the applicants claim points as a statewide network. With respect to technical parameters, GPR claims that its proposed 60 dBu contour would encompass 2,501 square kilometers with a population of 28,575; Araiza, 2,381 square kilometers and 81,060 people; Parkersburg, 2,563 square kilometers and 118,785 people; WVEB, 2,541 square kilometers and 50,862 people; and Serendipity, 790 square kilometers and 16,718 people. No applicant is eligible for any points under the best technical proposal

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<sup>103</sup> The allotment was not reserved by means of the third channel reservation test.

<sup>104</sup> If the Commission had accepted GPR’s claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, Wisconsin Board’s credited total of five points would still have exceeded GPR’s claimed total of two points.

<sup>105</sup> See GPR, Araiza, Parkersburg, WVEB, and Serendipity Applications, Questions III(1), III(2), and associated exhibits. GPR claims that it would provide aggregated first and second NCE service to all 28,575 of the 28,575 people encompassed within its 60 dBu contour; Araiza to 12,161 of the 81,000 people; Parkersburg to 13,257 of the 118,785 people; WVEB to 12,890 of the 50,862 people; and Serendipity to 16,191 of the 16,718 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

criterion because Parkersburg's proposal to serve the most area and population does not exceed both WVEB's next best area proposal and Araiza's next best population proposal by at least ten percent. Accordingly, Araiza and Parkersburg are credited with a total of five points each; GPR, WVEB, and Serendipity are not credited with any points.<sup>106</sup> Accordingly, GPR, WVEB, and Serendipity are each eliminated, and Araiza and Parkersburg proceed to a tie-breaker.

81. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. Araiza certifies that it has one attributable interest; Parkersburg certifies that it has no attributable interests in any radio authorizations. Parkersburg therefore prevails based on this first tie-breaker and is the tentative selectee in Group 66.

82. **NCE Reserved Allotment Group 67.** This final reserved allotment group consists of seven applications proposing service on vacant Channel 294C2 at Jackson, Wyoming, an allotment reserved by means of the third channel reservation standard. The applicants are: Grace Public Radio ("GPR"), Snake River Broadcasting ("SRB"), Cochise Community Radio Corporation ("Cochise"), Gospel American Network ("GAN"), JKJ Educational Foundation ("JKJ"), Mountain View Baptist Church ("MVBC"), and Calvary Chapel Fellowship of Teton ("CCFT"). GPR, Cochise, GAN, and MVBC fail to satisfy the third channel reservation criteria, and, accordingly, are each eliminated.<sup>107</sup> The remaining three applicants demonstrate compliance<sup>108</sup> and proceed to the point system analysis.

83. CCFT is the only applicant to certify that it is entitled to points as an established local applicant. Each applicant claims two points for diversity of ownership. None of the applicants claim points as statewide networks. With respect to technical parameters, SRB claims that its proposed 60 dBu contour would encompass 8,488 square kilometers with a population of 25,392; JKJ, 11,306 square kilometers and 24,431 people; and CCFT, 7,965 square kilometers and 25,141 people. No applicant is eligible for points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best proposal. Accordingly, CCFT is credited with a total of five points; SRB and JKJ are each awarded two points. CCFT is therefore the tentative selectee in Group 67.

84. **NCE MX Group 237.** This group originally consisted of three applications that proposed to serve two different communities in Texas. After conducting a fair distribution analysis that

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<sup>106</sup> If the Commission had accepted WVEB's claim of three points for localism and/or GPR's and Serendipity's claims of two points each for diversity of ownership, it would not have changed the outcome of this group. Specifically, Parkersburg would still have prevailed as the tentative selectee with its credited total of five points.

<sup>107</sup> GPR certifies that it will provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people. According to its application, however, it will provide aggregated first and second NCE service to only 2,653 of the 27,080 people encompassed within its proposed 60 dBu contour, which is less than ten percent. Cochise, GPR, and MVBC certify that their respective proposals do not currently satisfy the third channel reservation criteria.

<sup>108</sup> See SRB, JKJ, and CCFT Applications, Questions III(1), III(2), and associated exhibits. SRB claims that it would provide aggregated first and second NCE service to 4,548 of the 25,392 people encompassed within its proposed 60 dBu contour; JKJ to 2,471 of the 24,431 people; and CCFT to 3,765 of the 25,141 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

resulted in the elimination of one of the applications, the Commission conducted a point hearing.<sup>109</sup> The Commission found that the applications of Christian Ministries of the Valley, Inc. (“CMV”) for Del Rio, Texas (“CMV Application”) and Texas Public Radio (“TPR”), also for Del Rio, Texas (“TPR Application”), each were entitled to two points for diversity of ownership. Neither applicant claimed points as an established local applicant or as a statewide network. The Commission determined that neither application qualified for points as the best technical proposal because neither proposed to serve at least ten percent more area and population than the other.<sup>110</sup> This resulted in a tie, with CMV and TPR both having two points.<sup>111</sup> The Commission thus proceeded to the first tie-breaker specified in the Rules – the number of radio station authorizations attributable to each applicant. CMV won this tie-breaker. The Commission declared CMV to be the tentative selectee of MX Group 237, accepting for filing the CMV Application, and established a deadline for filing of petitions to deny the application.<sup>112</sup>

85. TPR filed a Petition to Deny (“Petition”) the CMV application on May 26, 2010. TPR asserts that the Commission erred in finding that its application was not entitled to points as the superior technical proposal.<sup>113</sup> TPR notes that the Commission compared its application against CMV’s amended application, filed after the close of the October 2007 filing window, instead of against CMV’s original application.<sup>114</sup> When the two applications are compared, TPR argues, its application proposes coverage that is more than 25 percent greater than CMV’s proposed coverage, whether such coverage is considered on the basis of area or population, and its application is therefore entitled to two points for its superior technical proposal.<sup>115</sup>

86. CMV filed an Opposition to Petition to Deny (“Opposition”)<sup>116</sup> on June 8, 2010, in which it concedes that the Commission analyzed the wrong technical proposal in comparing the two applications, but asserts that the TPR Application cannot be made the tentative selectee of MX Group 237 because it did not provide protection to a prior-filed application for a new FM station at Del Rio, Texas.<sup>117</sup> TPR filed an amendment on December 10, 2010, which protects the application in question. We therefore find this argument to be moot.

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<sup>109</sup> *Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 25 FCC Rcd 5013, 5032-33 (2010) (“32 Groups Comparative Order”).

<sup>110</sup> The Commission stated that TPR’s proposed 60 dBu contour would encompass 1,852 square kilometers with a population of 44,906, while CMV’s proposed 60 dBu contour in its amended application would encompass 1,761 square kilometers with a population of 44,290. *Id.* at 5033.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> Petition at 4-5.

<sup>114</sup> *Id.* CMV’s original proposed 60 dBu contour would encompass 752 square kilometers with a population of 30,850.

<sup>115</sup> *Id.* at 6.

<sup>116</sup> TPR filed a Reply to Opposition to Petition to Deny on June 21, 2010. CMV filed a pleading styled as Surreply on July 20, 2010. TPR filed a Motion for Leave to File Response to Surreply and a Response to Surreply on July 30, 2010. Although the post-reply pleadings are unauthorized pleadings, we will accept them in this case to ensure a complete record.

<sup>117</sup> Opposition at 2. *See also* File No. BPED-19990316MF.

87. Upon review of the record of NCE MX Group 237, we conclude that the Commission erred in considering CMV's enhanced technical proposal instead of the proposal included in its original application.<sup>118</sup> As stated above in our introduction to point system procedures, Commission rules provide that amendments after the date of application may potentially diminish, but cannot enhance, an NCE applicant's comparative position.<sup>119</sup> Accordingly, the required comparison is between CMV's original proposal and TPR's amended proposal, which downgraded its proposed coverage. Using the downgraded TPR total coverage numbers, 1,852 square kilometers<sup>120</sup> and 36,467 people,<sup>121</sup> and comparing them against CMV's original total coverage numbers, 752 square kilometers with a population of 30,850, we find that the TPR Application proposes to serve at least 10 percent more area and population than the CMV Application, but not the 25 percent it claimed in the Petition. Thus, the TPR Application is eligible for one point for superior technical proposal.<sup>122</sup> Therefore, TPR has three points and CMV's point total of two remains unchanged. Because TPR has more points than CMV, we identify TPR as the tentative selectee in NCE MX Group 237.

88. **NCE MX Group 540A.** Group 540, a group of 26 applicants proposing service to 19 different communities in Virginia, was included in a previous Media Bureau Order.<sup>123</sup> Pursuant to that Order, the Bureau granted the application of Praise Communications, Inc. based on fair distribution of service and had intended to dismiss all other applications. Two of the applications that had been slated for dismissal, however, are currently before us as a byproduct of a settlement submitted prior to the finality of the Bureau's Order, which created an additional grantable "singleton" application.<sup>124</sup> The applications of Hartland Institute for Health and Education ("Hartland") and Stucomm, Inc. ("Stucomm") now comprise Group 540A.

89. Hartland and Stucomm each propose to serve the same community of Orange, Virginia. A fair distribution analysis is, thus, unnecessary. Hartland claims three points as an established local applicant. Stucomm certifies that it does not qualify for any points under this criterion. Hartland and Stucomm claim two points each for diversity of ownership. Neither claims to be eligible for points as a statewide network. With respect to technical parameters, Hartland claims that its proposed 60 dBu

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<sup>118</sup> See *32 Groups Comparative Order*, 25 FCC Rcd at 5019, n.33. ("We have repeatedly disallowed the enhancement of qualifications in NCE comparative cases, consistent with 47 C.F.R. § 73.7003(e), and the Commission's historical concern that attempts to submit late information in comparative proceedings would 'lead to abuse of the Commission's processes, applicant gamesmanship, and unfair advantage.'" (internal cites omitted)).

<sup>119</sup> See ¶ 15 *supra* citing 47 C.F.R. § 73.7003(e).

<sup>120</sup> See Application at Section IV, Question 4.

<sup>121</sup> See December 10, 2010 Amendment to TPR Application at Section IV, Question 4.

<sup>122</sup> See 47 C.F.R. § 73.7003(b)(4).

<sup>123</sup> See *Threshold Fair Distribution Analysis of 28 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window*, Memorandum Opinion and Order, 24 FCC Rcd 12390, 12408-09 (2009).

<sup>124</sup> The settlement resulted in the grant of Holy Family, Inc.'s application as a "singleton." The dismissal and modification of other applications necessary to achieve the Holy Family grant also broke two applications apart from all others in Group 540. One of those applicants, Hartland Institute of Health and Education informed the Bureau of the formation of the new subgroup and requested a comparative analysis, as had been done in other cases where grant of a settlement bifurcated a mutually exclusive NCE group. The Bureau agreed and referred the applications to the Commission for a point system analysis. See *Hartland Institute of Health and Education*, Letter, Ref. 1800B3-MFW (Mar. 7, 2011).

contour would encompass 711 square kilometers and 16,899 people. Stucomm claims its contour would encompass 986 square kilometers and 23,395 people.<sup>125</sup> Stucomm is eligible for two points under the best technical proposal criterion because its proposal exceeds Hartland's by at least 25 percent. Accordingly, Hartland is credited with a total of five points and Stucomm with a total of four points. Hartland is the tentative selectee in Group 540A.

90. **NCE MX Group 95083E.** This group consists of three applications for communities in Hawaii. Calvary Chapel of Honolulu, Inc. ("CCHI") and Bible Broadcasting Network, Inc. ("BBN") each would serve Honolulu. Maka'ainana Broadcasting Company, Ltd. ("MBC") would serve Kaneohe. The Commission previously conducted a point system analysis in which MBC received five points, CCHI received three points, and BBN received no points.<sup>126</sup> The Commission identified MBC as the tentative selectee and CCHI, thereafter, filed a Petition to Deny ("Petition").<sup>127</sup> The staff considered the Petition pursuant to delegated authority, and found merit to CCHI's argument that MBC may not qualify for three points it claimed as an established local applicant physically headquartered within 25 miles of the proposed community of license.<sup>128</sup> The staff referred the matter to the Commission because exclusion of the points at issue could change the outcome of this proceeding. Subsequently, Mt. Wilson FM Broadcasters, Inc., owner of the site from which MBC proposed to operate, filed an informal objection alleging that MBC never had reasonable assurance of site availability. MBC, while claiming site assurance based on an agreement with a tenant subject to landlord approval, acknowledged that MBC had since lost any assurance it once may have had, and amended its application to specify a new site. CCHI filed an informal objection to the amended application, based on site assurance issues similar to those raised by Mt. Wilson FM Broadcasters, Inc.

91. With respect to the established local applicant preference, the Commission assigned this criterion the largest number of points available, based on an intention that only truly local applicants would qualify.<sup>129</sup> Thus, a local headquarters must be a primary place of business and not, for example, a post office box, vacation home, attorney's office, or branch office, which are more easily feigned and/or present less of an opportunity for meaningful contact with the community.<sup>130</sup> Similarly, a headquarters must be operational and not merely an address used by a "paper" or "shell" organization.<sup>131</sup> In this

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<sup>125</sup> Stucomm had proposed to serve a larger area and population but amended its proposal to facilitate the settlement. We have credited the lower, numbers proposed in the amendment.

<sup>126</sup> See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101, 6133 (2007) ("*Omnibus Order*").

<sup>127</sup> Petition to Deny (May 2, 2007).

<sup>128</sup> See *Calvary Chapel of Honolulu, Inc.*, Letter, 22 FCC Rcd 17654 (2007) ("*Decision Letter*"). See also 47 C.F.R. § 73.7000 (defining local applicant as "an applicant physically headquartered, having a campus, or having 75% of board members residing within 25 miles of the reference coordinates of the community to be served, or a governmental entity within its area of jurisdiction). An applicant must meet this definition for two years prior to application (or other applicable snapshot date) to be considered "established."

<sup>129</sup> See *Reexamination of Comparative Standards for Noncommercial Educational Application*, Report and Order, 15 FCC Rcd 7386, 7404-06 (2000) ("*NCE R&O*"); Memorandum Opinion and Order, 16 FCC Rcd 5074, 5091-93 (2001); Memorandum Opinion and Second Order on Reconsideration, ("*NCE Second Order*") 17 FCC Rcd 13132, 13137 (2002).

<sup>130</sup> *NCE R&O*, 15 FCC Rcd at 7410.

<sup>131</sup> *NCE Second Order*, 17 FCC Rcd at 13137-38.



manner, the Commission distinguishes organizations that are most likely serve community needs immediately because they can “hit the ground running” with local knowledge and accountability from those with a lesser degree of community “operations,” “contact,” and “interaction.”<sup>132</sup>

92. MBC claimed to have been headquartered at 875 Waimanu Street in Honolulu, Suite 110 (the “Suite 110” address), within 25 miles of Kaneohe, continuously since 1997.<sup>133</sup> However, when a CCHI employee visited that address following MBC’s tentative selection, he saw no MBC signage outside the building or on office doors, the parking attendant had not heard of MBC, and MBC’s name was not listed in building directories located on the parking level, ground floor lobby, or sixth floor (which the parking attendant suggested housed some radio tenants).<sup>134</sup> According to CCHI, “there is not a hint of MBC’s presence there or of any activity on the part of MBC other than prosecution of its application.”<sup>135</sup> In particular, CCHI alleges that MBC was not listed in the local telephone book or with directory assistance; an internet search that CCHI performed showed no educational, civic, or community functions or activities by MBC; and CCHI knows of no local event or broadcast program that MBC has produced.<sup>136</sup> The staff determined that the Petition established a *prima facie* case that MBC was an inchoate organization which had not yet had any meaningful operations from its claimed headquarters.

93. The Commission has stated that when a substantial question is raised about an applicant’s claim of points as an established local applicant, the applicant can resolve the challenge by showing activities during the relevant timeframe such as meetings with the community, classes at a local campus, community programs, regular income or expenses from community based assets, active planning of program service for the community, and/or similar ongoing community-based operations.<sup>137</sup> The staff considered responsive material from MBC, but found it insufficient to rebut CCHI’s showing. MBC acknowledged that it was formed primarily for the purpose of filing the application, and claimed no other past or present business activities. It argued nevertheless that it qualifies for receipt of points as an established local applicant because the sole basis for receipt of such points is a physical presence at a headquarters.<sup>138</sup> Thus, MBC focused on demonstrating that it was located in Suite 110 despite the lack of a prominent sign, rather than on documenting any MBC operations from that office. MBC explained that its name did not appear on the building’s directory or on the front door of its office because the building permits only one listing per tenant, whereas MBC has been headquartered in an office from which MBC board member Christopher Racine runs several businesses.<sup>139</sup> MBC further contended that CCHI’s allegedly fruitless search for MBC was not genuine because CCHI employees have visited that location previously for other, non-MBC matters.<sup>140</sup> Additionally, MBC stated that CCHI’s President has met

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<sup>132</sup> *Id.*

<sup>133</sup> See MBC Point Supplement, Ex. 1.

<sup>134</sup> Petition at 3–4; Declaration of Clif Burchfield, Traffic Director, KLHT(AM) (Petition, Ex. 2).

<sup>135</sup> Petition at 4.

<sup>136</sup> See Reply at 4-5; Declaration of William D. Stonebraker, President, CCHI (June 3, 2007) at 4-5 (Reply, Ex. 1) (“Stonebraker Declaration”).

<sup>137</sup> *Reexamination of Comparative Standards for Noncommercial Educational Applications*, 17 FCC Rcd at 13138.

<sup>138</sup> See Opposition at 5, n.3.

<sup>139</sup> See Opposition at 4.

<sup>140</sup> See Declaration of Donald Laidlaw, Employee, KALO(TV) (May 15, 2007) (Opposition, Ex. E). The CCHI employee disputes this allegation, stating that he had been in Suite 110 infrequently and had not seen any evidence

(continued....)

repeatedly with Racine in Suite 110 on matters related to MBC's application.<sup>141</sup> However, CCHI disputed that claim and maintained that the meetings with Racine concerned a television station licensed to a different organization.<sup>142</sup>

94. The staff stated that it would refer this matter to the full Commission for a new comparative analysis and invited MBC to submit any supplemental factual documentation for the Commission to consider.<sup>143</sup> MBC submitted the following facts supported by a declaration of its President under penalty of perjury: (1) a photograph of a sign located at a rear outside entrance to Suite 110 listing MBC among seven businesses therein (although MBC states that the sign exists, MBC also argues that signage is not necessary); (2) a description of a "somewhat unusual" building layout that might create difficulty seeing the MBC sign; (3) a statement that MBC's principals have regularly conferred concerning programming plans; and (4) descriptions of active involvement of several MBC principals in local public affairs. For example, it describes Racine as working for a considerable time with local charities and a noncommercial television station licensed to another entity, thereby providing opportunities for native Hawaiians to learn broadcasting skills and for the public to receive programs reflecting different local cultures, nationalities, ethnicities, and languages. In response, CCHI argues that the activities of board members are inconsequential for applicants that have, like MBC, relied on a local headquarters rather than local governing board. Moreover, CCHI would exclude several board members from consideration. For example, it would exclude Racine because MBC did not amend its application to reflect Racine joining the board until after the relevant snap shot date. CCHI also questions when the sign identifying MBC was installed and states that, regardless of signage, one needs more than a sign to establish a *bona fide* headquarters.

95. Neither the additional information nor the record as a whole supports any different conclusion from that previously reached by the staff that MBC is an inchoate organization which has not yet had any meaningful operations from its claimed headquarters. The Commission intended for established local applicant points to be available to "active" applicants present in the community for at least two years.<sup>144</sup> The Commission anticipated that some applicants would exist solely on paper and emphasized that a mere paper existence does not confer qualifications as an established local applicant.<sup>145</sup> It is clear from the record that MBC is not an actively operating organization and that its Suite 110 address functions, at most, like locations which the Commission has identified as insufficient to qualify for points, such as a lawyer's office.<sup>146</sup> MBC has been unable to document any business operations of its own at the "headquarters" and relies instead on the actions of its principals and other organizations in

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of MBC's presence during those visits. *See* Declaration of Clifton Burchfield, CCHI Employee (June 1, 2007) (Reply, Ex. 2).

<sup>141</sup> *See* Racine Declaration at 2 - 3.

<sup>142</sup> CCHI's President states that the meetings in Suite 110 concerned station KALO(TV), he did not know that MBC claimed to be headquartered there, and that his only MBC-related conversation with Racine was a brief settlement discussion which took place by telephone. *See* Stonebraker Declaration at 3.

<sup>143</sup> *Decision Letter*, 22 FCC Rcd at 17661.

<sup>144</sup> *See NCE Second Order*, 17 FCC Rcd at 13137.

<sup>145</sup> *Id.* at 13137-38.

<sup>146</sup> *See Omnibus Order*, 22 FCC Rcd at 6115-18. As the staff observed, Suite 110 did not even function as a mailing address for MBC. *Decision Letter*, 22 FCC Rcd at 17661 n. 53.

which they are involved. Although MBC states that its principals have conferred about potential MBC programming, it does not allege, much less document, that these conferences took place at Suite 110. Indeed, MBC acknowledges that “MBC was simply an entity that had filed an application for a new FM station” and that Suite 110 (the office of one of its principals) houses that application.<sup>147</sup> Although we agree with MBC (and CCHI) that signage alone is not determinative of a headquarters sufficient for receipt of points, we disagree with MBC’s view that designation of a headquarters from which it conducts virtually no business is equivalent to having been physically present at a primary place of business for at least two years.

96. With respect to the alleged active community involvement of several MBC principals, the Commission looks beyond those who formed the organization, to the applicant entity. For example, the Commission has stated that a newly-formed corporation cannot qualify as “established” based on the length of time that its principals have lived in the community, even if those principals are longstanding residents.<sup>148</sup> Similarly, MBC cannot rely on activities of local directors with other organizations to overcome its own lack of local activity, especially when MBC has never claimed that its board is comprised of at least 75 percent local residents. Nor is this difficulty overcome by the fact that Suite 110 also houses an active educational television station that shares a director with MBC. MBC is the applicant under consideration, and not the collocated television licensee or individual board members. MBC’s position that an inchoate organization is just as likely as one that is active to “hit the ground running” is inconsistent with that the Commission took in establishing and clarifying the point system.<sup>149</sup>

97. Accordingly, we will conduct a new comparative analysis in which we exclude the three points previously claimed under this criterion. BBN certified that it is not entitled to any points as an established local applicant and the Commission has determined that MBC is not eligible for points claimed under that criterion. CCHI claims three points under this criterion. MBC claims two points for diversity of ownership. Neither BBN nor CCHI claimed points under this criterion. No applicant claimed points as a statewide network. With respect to technical parameters, no party is entitled to points.<sup>150</sup> Accordingly, MBC is credited with a total of 2 points, CCHI with a total of 3 points, and BBN with no points. CCHI is the tentative selectee in Group 95083E. As MBC is no longer a tentative selectee, the informal objections questioning MBC’s assurance of site availability and MBC’s amendment of its application to specify a new site are moot.

98. **NCE MX Group 970312.** This is the Commission’s second opportunity to consider this group.<sup>151</sup> The question now before us is whether the Commission’s initial analysis mistakenly included a “singleton” application, thereby precluding one of the group’s mutually exclusive applicants

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<sup>147</sup> Supplement at 10. As the staff has observed, a good portion of MBC’s corporate goals -- program production, training, and community education -- can be accomplished without receipt of a Commission license. Nevertheless, MBC has not shown that it has engaged in any such activities.

<sup>148</sup> See *NCE Second Order*, 17 FCC Rcd at 13138 (rejecting argument that an organization is only local because the people behind it are local).

<sup>149</sup> *Id.*

<sup>150</sup> BBN’s proposed 60 dBu contour would encompass 1,590 square kilometers with a population of 876,151. CCHI’s proposed 60 dBu contour would encompass 1,582 square kilometers with a population of 876,302. MBC’s proposed 60 dBu contour would encompass 1,284 square kilometers with a population of 882,209. No applicant qualifies for points under the technical parameters criterion because none proposes to serve at least 10 percent more area and population than another.

<sup>151</sup> See *NCE Omnibus*, *supra* note 23, 22 FCC Rcd at 6139.

from receiving otherwise decisive points for best technical proposal. Group 970312, as analyzed by the Commission, consisted of three applicants -- State of Wisconsin-Educational Communications Board ("Wisconsin Board"), Lincoln High School ("Lincoln"), and American Family Association ("AFA"). The applicants respectively proposed service to Superior, Wisconsin; Esko, Minnesota; and Wentworth, Wisconsin. AFA amended its technical proposal on June 29, 2006, stating that the purpose of the amendment was to resolve the mutual exclusivity between its application and the other two. When the Commission conducted its comparative analysis on March 27, 2007, it did not consider that AFA had a pending amendment.<sup>152</sup> AFA received a total of four points, which included two points for best technical proposal in the group. Wisconsin Board and Lincoln tied with five points each. The Commission tentatively selected Lincoln over Wisconsin Board in a tie-breaker.

99. On June 19, 2007, the Bureau granted Lincoln's application and dismissed those of AFA and Wisconsin Board.<sup>153</sup> On June 28, 2007, the Bureau reinstated AFA's application upon recognizing that the 2006 amendment severed the application from the group.<sup>154</sup> On July 23, 2007, Wisconsin Board filed a Petition for Reconsideration of the grant of Lincoln's application and of the dismissal of its own. Wisconsin Board argues that the Commission should have compared its proposal only to Lincoln's application. Wisconsin Board states that, if the AFA singleton application had been removed from the group, a tie-breaker between Wisconsin Board and Lincoln would have been unnecessary because Wisconsin Board would have received two additional points for best technical proposal. Lincoln has not filed any responsive pleading. The Bureau referred Wisconsin Board's petition to the Commission because it believed that Wisconsin Board made a *prima facie* case and that a new comparative analysis by the Commission could change the outcome of this proceeding.

100. The Commission, prior to conducting a comparative analysis of a mutually exclusive group, will ordinarily consider any pending applicant-initiated requests that could alter the group's composition. Thus, when a proffered settlement or technical amendment identifies its purpose as achieving the grant of at least one application as a singleton, the Commission generally acts on that filing before conducting its initial analysis of any applications in that group which remain mutually exclusive.<sup>155</sup> AFA filed its amendment to remove itself from Group 970312 well before the Commission's analysis and, thus, the Commission should have acted upon that amendment and removed AFA from the group prior to a comparative analysis. Accordingly, we agree with Wisconsin Board that inclusion of AFA in

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<sup>152</sup> AFA had also previously filed an amendment which was returned as defective on December 26, 2001. At that time, amendments were filed on paper rather than electronically. The staff may have believed from the electronic record that only one amendment had been filed and that it had already been considered.

<sup>153</sup> The nominal expiration date of Lincoln's construction permit was June 19, 2010. However, Lincoln requested and received tolling of the expiration date based on the instant review of the permit grant. See 47 C.F.R. § 73.3598(b)(2). We thus reject Wisconsin Board's July 9, 2010, motion which claims that Lincoln's permit expired on June 19, 2010, and that Wisconsin Board's application should be considered as the only remaining proposal.

<sup>154</sup> AFA's application was granted on December 18, 2007, and the station is now licensed and operating as WWEN(FM).

<sup>155</sup> As a result, a single group is sometimes broken in to smaller sub-groups for analysis. See, e.g., *Comparative Consideration of 24 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, 25 FCC Red 12887 at nn. 38, 42, 49, and 62 (2010); *Comparative Consideration of 26 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, 25 FCC Red 11108 at n. 55 (2010); *Comparative Consideration of 52 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, 25 FCC Red 8793 at nn. 41, 46, and 70 (2010); *Threshold Fair Distribution Analysis of 22 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, 24 FCC Red 14531 (MB 2009) at nn. 26, 40.

the original comparative analysis was an error,<sup>156</sup> and will conduct a new point analysis limited to Wisconsin Board and Lincoln.

101. Lincoln and Wisconsin Board proposed service to different communities, but neither claimed a fair distribution preference because neither would provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing. Lincoln and Wisconsin Board claimed three points each as established local applicants. Lincoln claimed two points for local diversity of ownership. Wisconsin Board certified that it was not entitled to any points under this criterion. Wisconsin Board claimed two points as a statewide network. Lincoln certified that it was not entitled to any points under this criterion. With respect to technical parameters, Lincoln's proposed 60 dBu contour would encompass 211 square kilometers with a population of 6,985. Wisconsin Board's proposed 60 dBu contour would encompass 1,186 square kilometers with a population of 12,719. Wisconsin Board qualifies for two points as the best technical proposal because its proposed area and population exceed those of Lincoln by at least 25 percent. Accordingly, Wisconsin Board is credited with a total of seven points, and Lincoln is credited with a total of five points. Wisconsin Board is the new tentative selectee in Group 970312.

## V. NEXT STEPS

102. **Acceptability Studies and Filing of Petitions.** The staff has examined the applications of each tentative selectee for application defects.<sup>157</sup> Each tentative selectee identified in this Order and its Appendix appears to be fully qualified to become the licensee of the new or modified NCE FM station it has proposed. We tentatively conclude that the grant of these applications would serve the public interest, convenience and necessity. Accordingly, the tentative selectees are accepted for filing. This triggers a 30-day period from release of the Order for the filing of petitions to deny.

103. Any argument that the tentatively selected application should not be granted should be raised in such a petition, even if the objection relates only indirectly to the tentative selectee's qualifications. For example, an applicant that concedes that the tentative selectee is qualified for the points received but believes its own proposal should have received a greater number of points than the tentative selectee's would make its argument in a petition to deny. Parties should not raise such matters as petitions for reconsideration of the instant Order because the point hearings herein take no final action on any application, and petitions for reconsideration do not lie against such interlocutory decisions.<sup>158</sup>

104. **Forthcoming Staff Action.** We direct the staff, once the public notice period has run, to conduct a final study of each tentatively selected application in accordance with its routine processing procedures. The staff studies should consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of the tentatively

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<sup>156</sup> Our conclusion is limited to the facts at hand – where the Commission proceeded with an initial comparative analysis without considering a previously filed amendment that identified its purpose to sever a singleton application from the group. Once the Commission has analyzed a group, it generally will not revisit its decision absent such a showing of error. For example, pursuant to the Commission's "one-grant-per-group" policy, the Commission will not conduct a secondary analysis to choose additional selectees who are not mutually exclusive with a group's primary selectee. See *NCE MO&O*, 16 FCC Rcd at 5104-05.

<sup>157</sup> If a tentative selectee's application is found unacceptable for filing, it is returned. The applicant is then given one opportunity to submit a curative amendment. See 47 C.F.R. § 73.3522(b)(2). A tentative selectee that is unable to cure the defect with a minor amendment is disqualified, and the applicant with the next highest point tally becomes the new tentative selectee. See 47 C.F.R. § 73.7004(d).

<sup>158</sup> See *id.* § 1.106 (a) (1). See also *Patrick J. Vaughn, Esq.*, Letter, 22 FCC Rcd 11165 (MB 2007).

selected application would serve the public interest. If no such question exists, we direct the staff to grant the applications on the basis of the point system determinations made herein and dismiss all competing applications.

105. With the exception of issues that are novel or require Commission or Administrative Law Judge consideration by law, the staff shall act on the tentatively selected applications pursuant to delegated authority. We delegate to the staff authority to act on any routine matter that may be raised, including whether the applicant is eligible, as certified, for the points awarded herein, and whether the application complies with all relevant Commission rules and policies.<sup>159</sup> The staff need not refer such matters to the Commission or Administrative Law Judge unless the staff determines that the issues are new or novel, or raise a substantial and material question regarding the award of points. Generally, the staff should refer only those issues to the Commission where the exclusion or inclusion of challenged or claimed points could alter the outcome in the particular NCE group, or where a new or novel question or substantial and material question of fact otherwise exists.<sup>160</sup> In such cases, the staff would either designate the application for hearing on the substantial and material question or refer the mutually exclusive group to the Commission for resolution of the novel issue and/or the determination of a successor tentative selectee.

106. **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.

## VI. ORDERING CLAUSES

107. 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>161</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.

108. **NCE Reserved Allotment Group 5.** Accordingly, IT IS ORDERED, That First Baptist Church of Hemet, Codepink Redlands, and Center for Public Deliberation are TENTATIVELY SELECTED to be awarded construction permits ON A TIME-SHARING BASIS for new NCE FM stations in Hemet, California. The four applications ARE 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 tentatively selected applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Riverside Community College Norco Campus (File No. BNPED-20100222ACP), Southern California Public Radio (File No. BNPED-20100225ACM), Radio Bilingue, Inc. (File No. BNPED-

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<sup>159</sup> See, e.g., *Central Florida Educational Foundation, Inc.*, Letter, 23 FCC Rcd 1695 (MB 2008) (staff dismissal of defective application tentatively selected in a point hearing, and staff award of permit on a non-comparative basis to only remaining acceptable applicant).

<sup>160</sup> See generally *NCE Omnibus*, 22 FCC Rcd at 6162 n. 230 (2007) (standards for staff evaluation of petitions).

<sup>161</sup> See 5 U.S.C. §§ 702, 704, 706; 47 U.S.C. §§ 309(d), 402(b), 405; 47 C.F.R. §§ 1.106-08, 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 a reviewing court. See, e.g., FED. R. APP. P. 3(b).

20100225ACX), Centro Cristiano Vida Abundante, Inc. (File No. BNPED-20100226ADW), Good News Radio (File No. BNPED-20102226AFK), Hemet Seventh-Day Adventist Church (File No. BNPED-20100226AGG), Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AHS), and Holy Cross Radio (File No. BNPED-20100226AHZ). We further direct the staff to provide the tentatively selected applicants a ninety (90)-day period in which to reach a time-sharing agreement among themselves and, pursuant to an acceptable agreement, TO GRANT the applications of First Baptist Church of Hemet (File No. BNPED-20100225AAP), Codepink Redlands (File No. BNPED-20100226AJP) and Center for Public Deliberation (File No. BNPED-20100226AJQ) CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service. If the applicants are unable to reach a voluntary time-sharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate time-sharing arrangement.

109. **NCE Reserved Allotment Group 35.** Accordingly, IT IS ORDERED, That Calvary Chapel of Cape Cod, Inc. and Cape Cod Catholic Radio, Inc. are TENTATIVELY SELECTED to be awarded construction permits ON A TIME-SHARING BASIS for new NCE FM stations in West Tisbury, Massachusetts. The two applications ARE 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 tentatively selected applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Martha's Vineyard Community Radio, Inc. (File No. BNPED-20100223ADX), New Bedford Christian Radio, Inc. (File No. BNPED-20100225AAA), and Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AHI). We further direct the staff to provide the tentatively selected applicants a ninety (90)-day period in which to reach a time-sharing agreement among themselves and, pursuant to an acceptable agreement, TO GRANT the applications of Calvary Chapel of Cape Cod, Inc. (File No. BNPED-20100226ADB) and Cape Cod Catholic Radio, Inc. (File No. BNPED-20100226ADP) CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service. If the applicants are unable to reach a voluntary time-sharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate time-sharing arrangement.

110. **NCE Reserved Allotment Group 36.** Accordingly, IT IS ORDERED, That Hubbardston Community Radio is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Hubbardston, Michigan, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Calvary Radio Network, Inc. (File No. BNPED-20100226AAS), Saidnewsfoundation (File No. BNPED-20100226ACJ), and Evangelical Broadcasting Group, Inc. (File No. BNPED-20100226AJK), and TO GRANT the application of Hubbardston Community Radio (File No. BNPED-20100226AGV) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

111. **NCE Reserved Allotment Group 37.** Accordingly, IT IS ORDERED, That Lake Area Educational Broadcasting Foundation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Huntsville, Missouri, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive application of Community Broadcasting, Inc. (File No. BNPED-20100226AAK) and TO GRANT the application of Lake Area Educational Broadcasting Foundation (File No. BNPED-20100224AAR) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

112. **NCE Reserved Allotment Group 38.** Accordingly, IT IS ORDERED, That Lake Area Educational Broadcasting Foundation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Laurie, Missouri, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive applications of The Curators of the University of Missouri (File No. BNPED-20100225ADA), Serendipity Educational Broadcasting, Inc. (File No. BNPED-20100225ADM), Community Broadcasting, Inc. (File No. BNPED-20100226AAM), and Real Community Radio Network, Inc. (File No. BNPED-20100226ADE), and TO GRANT the application of Lake Area Educational Broadcasting Foundation (File No. BNPED-20100224AAS) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

113. **NCE Reserved Allotment Group 39.** Accordingly, IT IS ORDERED, That Gallatin Valley Community Radio and Mount Ellis Academy are TENTATIVELY SELECTED to be awarded construction permits ON A TIME-SHARING BASIS for new NCE FM stations in Bozeman, Montana. The two applications ARE 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 tentatively selected applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Grace Public Radio (File No. BNPED-20100222AAD), Guild of St. Peter Educational Association (File No. BNPED-20100226ACE), Gallatin Educational Radio Association (File No. BNPED-20100226ACH), and Cedar Cove Broadcasting, Inc. (File No. BNPED-20100226AJR). We further direct the staff to provide the tentatively selected applicants a ninety (90)-day period in which to reach a time-sharing agreement among themselves and, pursuant to an acceptable agreement, TO GRANT the applications of Gallatin Valley Community Radio (File No. BNPED-20100225ADQ) and Mount Ellis Academy (File No. BNPED-20100226AGK) CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system. If the applicants are unable to reach a voluntary time-sharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate time-sharing arrangement.

114. **NCE Reserved Allotment Group 40.** Accordingly, IT IS ORDERED, That The Canary Coalition, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Dillsboro, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Blue Ridge Broadcasting Corporation (File No. BNPED-20100225ACN), Western Carolina University



(File No. BNPED-20100226ABN), Network of Glory, Inc. (File No. BNPED-20100226ACR), and Toccoa Foundation, Inc. (File No. BNPED-20100226AFX), and TO GRANT the application of The Canary Coalition, Inc. (File No. BNPED-20100226AIG) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

115. **NCE Reserved Allotment Group 43.** Accordingly, IT IS ORDERED, That Medaille College, Lockport Seventh-Day Adventist Church, and Calvary Chapel of the Niagara Frontier are TENTATIVELY SELECTED to be awarded construction permits ON A TIME-SHARING BASIS for new NCE FM stations in Amherst, New York. The three applications ARE 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 tentatively selected applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of JCM Radio of NY, Inc. (File No. BNPED-20100222AAO), Triangle Foundation, Inc. (File No. BNPED-20100226ACA), Helen M. Randall Memorial Baptist Church (File No. BNPED-20100226AEE), Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AHH), Call Communications Group, Inc. (File No. BNPED-20100226AIN), and Smile FM (File No. BNPED-20100226AJM). We further direct the staff to provide the tentatively selected applicants a ninety (90)-day period in which to reach a time-sharing agreement among themselves and, pursuant to an acceptable agreement, TO GRANT the applications of Medaille College (File No. BNPED-20100224AAO), Lockport Seventh-Day Adventist Church (File No. BNPED-20100226AFZ), and Calvary Chapel of the Niagara Frontier (File No. BNPED-20100226AGW) CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service. If the applicants are unable to reach a voluntary time-sharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate time-sharing arrangement.

116. **NCE Reserved Allotment Group 44.** Accordingly, IT IS ORDERED, That Birds of a Feather Media Limited, Calvary Chapel of the Hudson Valley, Christian Media Associates, Inc., and Somos la Llave del Futuro are TENTATIVELY SELECTED to be awarded construction permits ON A TIME-SHARING BASIS for new NCE FM stations in Rhinebeck, New York. The four applications ARE 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 tentatively selected applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of JCM Radio of NY, Inc. (File No. BNPED-20100222AAP), PZK Hudson Foundation Radio, Inc. (File No. BNPED-20100222ACJ), Grace Public Radio (File No. BNPED-20100223AAD), WMHT Educational Telecommunications (File No. BNPED-20100225AAK), Counterpoint Communications, Inc. (File No. BNPED-20100226ACD), Foothills Public Radio, Inc. (File No. BNPED-20100226AEM), and Marist College (File No. BNPED-20100226AGS). We further direct the staff to provide the tentatively selected applicants a ninety (90)-day period in which to reach a time-sharing agreement among themselves and, pursuant to an acceptable agreement, TO GRANT the applications of Birds of a Feather Media Limited (File No. BNPED-20100223ABY), Calvary Chapel of the Hudson Valley (File No. BNPED-20100226AAJ), Christian Media Associates, Inc. (File No. BNPED-20100226AFU), and Somos la Llave del Futuro (File No. BNPED-20100226AIM) CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system. If the applicants are unable to reach a voluntary time-sharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate time-sharing arrangement.

117. **NCE Reserved Allotment Group 45.** Accordingly, IT IS ORDERED, That Norman Unitarian Universalist Fellowship is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Cordell, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Grace Public Radio (File No. BNPED-20100224AAK), Better Public Broadcasting Association (File No. BNPED-20100224ACF), Serendipity Educational Broadcasting, Inc. (File No. BNPED-20100225ADH), and Hammock Educational and Environmental Community Services (File No. BNPED-20100226AGP), and TO GRANT the application of Norman Unitarian Universalist Fellowship (File No. BNPED-20100226AIZ) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

118. **NCE Reserved Allotment Group 46.** Accordingly, IT IS ORDERED, That Better Public Broadcasting Association is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Weatherford, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive application of Grace Public Radio (File No. BNPED-20100222AAA) and TO GRANT the application of Better Public Broadcasting Association (File No. BNPED-20100224ACH) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

119. **NCE Reserved Allotment Group 47.** Accordingly, IT IS ORDERED, That Wynnewood Community Radio Association and Main Street Pauls Valley, Inc. are TENTATIVELY SELECTED to be awarded construction permits ON A TIME-SHARING BASIS for new NCE FM stations in Wynnewood, Oklahoma. The two applications ARE 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 tentatively selected applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Better Public Broadcasting Association (File No. BNPED-20100224ACI), Serendipity Educational Broadcasting, Inc. (File No. BNPED-20100225ADJ), Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AHF), and Norman Unitarian Universalist Fellowship (File No. BNPED-20100226AJA). We further direct the staff to provide the tentatively selected applicants a ninety (90)-day period in which to reach a time-sharing agreement among themselves and, pursuant to an acceptable agreement, TO GRANT the applications of Wynnewood Community Radio Association (File No. BNPED-20100225ADV) and Main Street Pauls Valley, Inc. (File No. BNPED-20100226AJT) CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service. If the applicants are unable to reach a voluntary time-sharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate time-sharing arrangement.

120. **NCE Reserved Allotment Group 48.** Accordingly, IT IS ORDERED, That Calvary Chapel of McMinnville, Inc., Dallas Seventh-Day Adventist Church, Mano a Mano Family Center, and Capital Community Television, Inc. are TENTATIVELY SELECTED to be awarded construction

permits ON A TIME-SHARING BASIS for new NCE FM stations in Dallas, Oregon. The four applications ARE 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 tentatively selected applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Grace Public Radio (File No. BNPED-20100224ACK), Centro Cristiano Vida Abundante, Inc. (File No. BNPED-20100226ADS), and Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AHE). We further direct the staff to provide the tentatively selected applicants a ninety (90)-day period in which to reach a time-sharing agreement among themselves and, pursuant to an acceptable agreement, TO GRANT the applications of Calvary Chapel of McMinnville, Inc. (File No. BNPED-20100222ACK), Dallas Seventh-Day Adventist Church (File No. BNPED-20100223AAB), Mano a Mano Family Center (File No. BNPED-20100225ADD), and Capital Community Television, Inc. (File No. BNPED-20100226AEJ) CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service, and PROVIDED THAT, Calvary Chapel of McMinnville, Inc. must surrender its license for low power FM station KKJC-LP, McMinnville, Oregon, prior to commencement of program tests of the full service NCE FM station. If the applicants are unable to reach a voluntary time-sharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate time-sharing arrangement.

121. **NCE Reserved Allotment Group 49.** Accordingly, IT IS ORDERED, That Tool Shed PDX is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Madras, Oregon, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive application of Educational Broadcast Service (File No. BNPED-20100226AIL), and TO GRANT the application of Tool Shed PDX (File No. BNPED-20100226AJY) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

122. **NCE Reserved Allotment Group 50.** Accordingly, IT IS ORDERED, That The Dalles Seventh-Day Adventist Church is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in The Dalles, Oregon, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Centro Familiar Cristiano (File No. BNPED-20100222ACV), Radio Bilingue, Inc. (File No. BNPED-20100225ACU), Ondas de Vida Network, Inc. (File No. BNPED-20100226AAF), and Cascade Community Radio (File No. BNPED-20100226AJW), and TO GRANT the application of The Dalles Seventh-Day Adventist Church (File No. BNPED-20100226AHW) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

123. **NCE Reserved Allotment Group 51.** Accordingly, IT IS ORDERED, That The Williamsport Guardian, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Liberty, Pennsylvania, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive

applications of Calvary Chapel of Russell (File No. BNPED-20100225ABC), Harvest Family Fellowship of the Assemblies of God (File No. BNPED-20100226ADL), Cedar Cove Broadcasting, Inc. (File No. BNPED-20100226AJC), and Northeastern Pennsylvania Educational Television Association (File No. BNPED-20100226AJJ), and TO GRANT the application of The Williamsport Guardian, Inc. (File No. BNPED-20100226AIO) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

124. **NCE Reserved Allotment Group 52.** Accordingly, IT IS ORDERED, That The Broome County Urban League, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Susquehanna, Pennsylvania, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive applications of JCM Radio of NY, Inc. (File No. BNPED-20100222AAN), Calvary Chapel of Russell (File No. BNPED-20100225ABA), Montrose Broadcasting Corporation (File No. BNPED-20100225ABZ), Davis College (File No. BNPED-20100226ADV), and Redeemer Broadcasting, Inc. (File No. BNPED-20100226AGE), and TO GRANT the application of The Broome County Urban League, Inc. (File No. BNPED-20100226AFC) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

125. **NCE Reserved Allotment Group 53.** Accordingly, IT IS ORDERED, That Barnwell Community Radio and St. Andrew Roman Catholic Church are TENTATIVELY SELECTED to be awarded construction permits ON A TIME-SHARING BASIS for new NCE FM stations in Barnwell, South Carolina. The two applications ARE 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 tentatively selected applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Richburg Educational Broadcasters, Inc. (File No. BNPED-20100225ACE), Impact Church (File No. BNPED-20100226AHG), and Network of Glory, Inc. (File No. BNPED-20100226AID). We further direct the staff to provide the tentatively selected applicants a ninety (90)-day period in which to reach a time-sharing agreement among themselves and, pursuant to an acceptable agreement, TO GRANT the applications of Barnwell Community Radio (File No. BNPED-20100219ABC) and St. Andrew Roman Catholic Church (File No. BNPED-20100226AGA) CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service. If the applicants are unable to reach a voluntary time-sharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate time-sharing arrangement.

126. **NCE Reserved Allotment Group 54.** Accordingly, IT IS ORDERED, That Camp Peniel, Inc. and Burnet Bible Church are TENTATIVELY SELECTED to be awarded construction permits ON A TIME-SHARING BASIS for new NCE FM stations in Burnet, Texas. The two applications ARE 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 tentatively selected applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of The University of Texas at Austin (File No.

BNPED-20100224AAQ), Penfold Communications, Inc. (File No. BNPED-20100225ACL), Austin Airwaves, Inc. (File No. BNPED-20100225ADB), Serendipity Educational Broadcasting, Inc. (File No. BNPED-20100225ADI), and Community Broadcasting, Inc. (File No. BNPED-20100226AGB). We further direct the staff to provide the tentatively selected applicants a ninety (90)-day period in which to reach a time-sharing agreement among themselves and, pursuant to an acceptable agreement, TO GRANT the applications of Camp Peniel, Inc. (File No. BNPED-20100226ACK) and Burnet Bible Church (File No. BNPED-20100226AII) CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service, and PROVIDED THAT, Burnet Bible Church must surrender its license for low power FM station KFGG-LP, Burnet, Texas, prior to commencement of program tests of the full service NCE FM station. If the applicants are unable to reach a voluntary time-sharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate time-sharing arrangement.

127. **NCE Reserved Allotment Group 55.** Accordingly, IT IS ORDERED, That Oasis of Faith, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Denver City, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AHD) and Edgewater Broadcasting, Inc. (File No. BNPED-20100226AHY), and TO GRANT the application of Oasis of Faith, Inc. (File No. BNPED-20100225AAB) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

128. **NCE Reserved Allotment Group 58.** Accordingly, IT IS ORDERED, That Familia Dei and Fairfield Center are TENTATIVELY SELECTED to be awarded construction permits ON A TIME-SHARING BASIS for new NCE FM stations in Shenandoah, Virginia. The two applications ARE 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 tentatively selected applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Grace Public Radio (File No. BNPED-20100224AAJ), James Madison University Board of Visitors (File No. BNPED-20100226AEB), and Holy Family Communications (File No. BNPED-20100226AFG). We further direct the staff to provide the tentatively selected applicants a ninety (90)-day period in which to reach a time-sharing agreement among themselves and, pursuant to an acceptable agreement, TO GRANT the applications of Familia Dei (File No. BNPED-20100226ADG) and Fairfield Center (File No. BNPED-20100226AIJ) CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service. If the applicants are unable to reach a voluntary time-sharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate time-sharing arrangement.

129. **NCE Reserved Allotment Group 59.** Accordingly, IT IS ORDERED, That V.I. Christian Ministries, Inc. and Virgin Islands Public Television System are TENTATIVELY SELECTED to be awarded construction permits ON A TIME-SHARING BASIS for new NCE FM stations in Charlotte Amalie, Virgin Islands. The two applications ARE 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 tentatively selected applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Family Educational Association, Inc. (BNPED-20100223ACD) and Hammock Educational and Environmental Community Services (File No. BNPED-20100226ACL). We further direct the staff to provide the tentatively selected applicants a ninety (90)-day period in which to reach a time-sharing agreement among themselves and, pursuant to an acceptable agreement, TO GRANT the applications of V.I. Christian Ministries, Inc. (File No. BNPED-20100223AAP) and Virgin Islands Public Television System (File No. BNPED-20100225ACS) CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system. If the applicants are unable to reach a voluntary time-sharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate time-sharing arrangement.

130. **NCE Reserved Allotment Group 60.** Accordingly, IT IS ORDERED, That Community Celebrations Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Chewelah, Washington, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Grace Public Radio (File No. BNPED-20100224AAY) and Cor Christi (File No. BNPED-20100226AFH), and TO GRANT the application of Community Celebrations Inc. (File No. BNPED-20100226AJL) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

131. **NCE Reserved Allotment Group 61.** Accordingly, IT IS ORDERED, That KWPA Whidbey Public Radio is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Oak Harbor, Washington, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Friends of KEXP (File No. BNPED-20100226ABS), Bible Broadcasting Network, Inc. (File No. BNPED-20100226AFA), and Iglesia Pentecostal Visperia del Fin (File No. BNPED-20100226AIQ), and TO GRANT the application of KWPA Whidbey Public Radio (File No. BNPED-20100226AFN) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

132. **NCE Reserved Allotment Group 62.** Accordingly, IT IS ORDERED, That Northland College is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Ashland, Wisconsin, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Grace Public Radio (File No. BNPED-20100222AAC), State of Wisconsin – Educational Communications Board (File No. BNPED-20100226AAN), and True North Community Outreach (File No. BNPED-20100226AGF), and TO GRANT the application of Northland College (File No. BNPED-20100226AGU) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and PROVIDED THAT, Northland College must surrender its license for low power FM station

WRNC-LP, Ashland, Wisconsin, prior to commencement of program tests of the full service NCE FM station.

133. **NCE Reserved Allotment Group 63.** Accordingly, IT IS ORDERED, That Evangelical Broadcasting Group, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Augusta, Wisconsin, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Crossfire Incorporated (File No. BNPED-20100223ADB) and True North Community Outreach (File No. BNPED-20100226AFR), and TO GRANT the application of Evangelical Broadcasting Group, Inc. (File No. BNPED-20100226AJG) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

134. **NCE Reserved Allotment Group 65.** Accordingly, IT IS ORDERED, That State of Wisconsin – Educational Communications Board is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Washburn, Wisconsin, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Grace Public Radio (File No. BNPED-20100225AAN), True North Community Outreach (File No. BNPED-20100226AGD), and Cedar Cove Broadcasting, Inc. (File No. BNPED-20100226AJH), and TO GRANT the application of State of Wisconsin – Educational Communications Board (File No. BNPED-20100226AAO) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

135. **NCE Reserved Allotment Group 66.** Accordingly, IT IS ORDERED, That Parkersburg Catholic Schools Foundation, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in St. Marys, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Grace Public Radio (File No. BNPED-20100223AEP), Araiza Revival Ministries, Inc. (File No. BNPED-20100226ACC), West Virginia Educational Broadcasting Authority (File No. BNPED-20100226ACQ), and Serendipity Educational Broadcasting, Inc. (File No. BNPED-20100226ADJ), and TO GRANT the application of Parkersburg Catholic Schools Foundation, Inc. (File No. BNPED-20100226ACI) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

136. **NCE Reserved Allotment Group 67.** Accordingly, IT IS ORDERED, That Calvary Chapel Fellowship of Teton Valley, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Jackson, Wyoming, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Grace Public Radio (File No. BNPED-20100223AER), Snake River

Broadcasting (File No. BNPED-20100224ACP), Cochise Community Radio Corporation (File No. BNPED-20100226ABW), Gospel American Network (File No. BNPED-20100226ADQ), JKJ Educational Foundation (File No. BNPED-20100226AFQ), and Mountain View Baptist Church (File No. BNPED-20100226AGM), and TO GRANT the application of Calvary Chapel Fellowship of Teton Valley, Inc. (File No. BNPED-20100226AJD) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

137. **NCE MX Group 237.** Accordingly, IT IS ORDERED that the Petition to Deny filed by Texas Public Radio on May 26, 2010, IS GRANTED to the extent discussed herein and the application of Christian Ministries of the Valley, Inc. for a new NCE FM station in Del Rio, Texas (File No. BNPED-20071019ABT) IS DISMISSED. IT IS FURTHER ORDERED, That Texas Public Radio is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Del Rio, 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 direct the staff, by public notice, TO GRANT the application of Texas Public Radio (File No. BNPED-20071016AIU) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

138. **NCE MX Group 540A.** Accordingly, IT IS ORDERED that Hartland Institute of Health and Education is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Orange, 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 direct the staff, by public notice, TO DISMISS the mutually exclusive application of Stucomm, Inc. (File No. BNPED-20071018ATY) and TO GRANT the application of Hartland Institute of Health and Education (File No. BNPED-20071019AJA) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

139. **NCE MX Group 95083E.** Accordingly, IT IS ORDERED, that the tentative selection of the application of Maka'ainana Broadcasting Company, Inc. (File No. BNPED-19960418MB) for a permit to construct a new NCE FM station, IS RESCINDED. IT IS FURTHER ORDERED, that the May 2, 2007 Petition to Deny filed by Calvary Chapel of Honolulu, Inc. IS GRANTED to the extent indicated herein. IT IS FURTHER ORDERED, that the December 13, 2007 Informal Objection filed by Mt. Wilson FM Broadcasters, Inc. and the August 11, 2008 Informal Objection filed by Calvary Chapel of Honolulu, Inc. ARE DISMISSED AS MOOT. IT IS FURTHER ORDERED, that the application filed by Calvary Chapel of Honolulu, Inc. (File No. BNPED-19960416MA) is TENTATIVELY SELECTED to be awarded a construction permit for a new noncommercial educational FM station at Honolulu, Hawaii. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff by Public Notice, TO DISMISS the mutually exclusive applications of Maka'ainana Broadcasting, Inc. (File No. BNPED-19960418MB) and Bible Broadcasting Network, Inc. (File No. BNPED-19950814MA) and TO GRANT the application of Calvary Chapel of Honolulu, Inc. (File No. BNPED-19960416MA) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.



140. **NCE MX Group 970312.** Accordingly, IT IS ORDERED, That the tentative selection of the application of Lincoln High School (File No. BPED-19970331MA) for a construction permit for a new NCE FM station in Esko, Minnesota, IS RESCINDED. IT IS FURTHER ORDERED, That the Petition for Reconsideration, filed by State of Wisconsin-Educational Communications Board, IS GRANTED to the extent indicated herein. IT IS FURTHER ORDERED, That State of Wisconsin-Educational Communications Board is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Superior, Wisconsin, and its application IS ACCEPTED FOR FILING. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Lincoln High School (File No. BPED-19970331MA) and TO GRANT the application of State of Wisconsin-Educational Communications Board (File No. BPED-19971211MC) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX

## NCE Reserved FM Allotment Groups

1. The Appendix consists of a chart and this explanatory text. The chart lists each proceeding by group number. Boldface type is used to designate the applicant(s) in each group that the Commission has tentatively selected to receive a construction permit.

2. An entry of “n/a” or “No” in the Appendix’s Third Channel Reservation Standard column indicates that the third channel reservation criteria are not applicable to that particular allotment. We also use this “n/a” or “No” designation for defective submissions, which were eliminated from the group prior to our consideration of the point system factors. Where applicable, the Appendix lists the population which each applicant claims would receive a new first service or aggregated first and second service. The Appendix includes population numbers only to the extent that such information is material to the analysis. For example, if an allotment was not reserved by means of the third channel reservation standard, the Appendix does not report specific first and second service population data. If an applicant provided numbers, but did not satisfy the third channel reservation criteria, the chart notes either “<10 %” or “<2,000,” to indicate that the number of people served was less than 10 percent of the population or fewer than 2,000 people. If an applicant is eliminated on the basis of the third channel reservation test, that outcome is noted as “Elim on 3<sup>rd</sup> res test” in the Appendix.

3. With respect to points, the Appendix to this Order places three points in the “Established Local Applicant” column, two points in the “Diversity of Ownership” column, and two points in the “Statewide Network” column of each applicant claiming eligibility for such points. In cases where an applicant claimed points, but failed to satisfy the respective requirements for receipt of such points, the Appendix lists the points claimed followed in parenthesis by the points credited. For example, an applicant that claimed two points for diversity of ownership, but which did not submit any documentation in support of its claim would have the notation 2(0) in the diversity of ownership column, *i.e.*, it claimed two points but received none. A note “no d exh” or “defect d exh” in the notes column would indicate that the applicant did not support its diversity claim, either because it submitted no exhibit or because an exhibit was deemed defective for lack of the most basic information necessary. Similar notes, of “no l exh” and “no s exh” indicate a lack of support for a local applicant and statewide network claim, respectively. An applicant may receive zero, one, or two points in the Best Technical Parameters column depending upon the size of the area and population to be covered by its proposed station.

4. In the case of a tie, the Appendix lists any tie-breaker factors considered including the number of attributable authorizations and/or applications reported by each tied applicant. The lowest number value for pending applications is “one” because the subject application is included in the calculation. Some applicants erroneously claimed zero pending applications. These applicants have the notation 0(1) in the tie-breaker column, thus specifying that they claimed zero applications but are considered to have one application for purposes of the tie-breaker. Any applications that did not proceed to a tie-breaker because they were entitled to fewer points than the tied applicants are designated with the note “Elim Points.”

5. Notes are also used to describe certain application characteristics. For example, the note “Trans Divest” is used to identify applicants which excluded existing translators from their diversity showings by pledging to request cancellation of the translator upon commencement of full service operations. The note “LPFM Divest” is used to denote applicants that excluded existing LPFM stations that would be divested upon grant of a full service authorization.

6. Finally, the Appendix contains a “See Text” column which refers the reader to a section or footnote within the text, typically in connection with a listed note. References to textual discussion are generally reserved for applications with omissions, errors, novel arguments, or which required consideration of rule waivers. The “See Text” column is blank for most applications because the applicants did not raise issues that required an analysis of these types of issues. This column is also used for miscellaneous notes.