

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

In the Matter of )  
 )  
Comparative Consideration of 18 Groups of ) NCE MX Group Numbers 7, 25, 44, 169,  
Mutually Exclusive Applications ) 175, 197, 207, 217, 246, 314(A and C), 382,  
for Permits to Construct New or Modified ) 506, 516, 522, 529B, 537B, 538, and  
Noncommercial Educational FM Stations ) 9901XP

MEMORANDUM OPINION AND ORDER

Adopted: January 26, 2011

Released: January 26, 2011

By the Commission:

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**I. BACKGROUND**

1. By this Memorandum Opinion and Order (“Order”), the Commission considers 18 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 comparative procedures codified in Part 73, Subpart K, of the Commission’s Rules (the “Rules”).<sup>2</sup> This

<sup>1</sup> With the exception of Group 9901XP, each application was filed or amended during a filing window that was open from October 12, 2007, through October 22, 2007. The applications in Group 9901XP were cut off from competing applications prior to the October window. Pre-window procedures applicable specifically to that group 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”). Applications for new stations or major modifications that were on file prior to the October window, but not cut off from competing applications were required to amend their applications to be considered along with applications filed during the window. See *NCE MO&O*, 16 FCC Rcd at 5086 (2002); *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).

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

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>

## II. GENERAL NCE PROCEDURES

2. The Commission's analysis of mutually exclusive groups of NCE applications generally consists of three main components. First, if applicants 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>4</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>5</sup> are compared under an NCE point system,<sup>6</sup> which is a simplified, "paper hearing" process.<sup>7</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.

3. When mutually exclusive applications for permits to construct NCE FM stations propose to serve different communities, the Bureau performs a threshold determination as to whether grant of any of the applications would best further the fair, efficient, and equitable distribution of radio service among communities.<sup>8</sup> An NCE FM applicant is eligible to receive a Section 307(b) preference if it would

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<sup>3</sup> See *id.* § 73.7004(b).

<sup>4</sup> See 47 U.S.C. § 307(b).

<sup>5</sup> See 47 C.F.R. § 73.7002 (procedures for selecting among mutually exclusive applicants for stations proposing to serve different communities).

<sup>6</sup> See 47 C.F.R. § 73.7003 (point system selection procedures).

<sup>7</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 (2001) ("*NCE MO&O*"), *Erratum*, 16 FCC Rcd 10549 (2001), *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. 10004 (2004) (history pertaining only to non-reserved band FM channels omitted).

<sup>8</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 307(b) determinations in NCE cases. See *NCE Order*, 15 FCC 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. The staff has referred the Section 307(b) analyses in each of the present groups to the Commission for consolidated analysis because Section 307(b) factors did not entirely resolve all applications in these groups and the Commission must, therefore, consider the remaining applications in a point hearing.

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 the population served is at least 2,000 people.<sup>9</sup>

4. 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>10</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>11</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>12</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.**

5. The Commission compares mutually exclusive groups of NCE FM applications under the point system set forth in Section 73.7003 of the Rules.<sup>13</sup> The NCE point system awards a maximum of seven merit points, based on four distinct criteria.<sup>14</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 each group of mutually exclusive applications that follow only discuss an applicant's documentation if it is insufficient to justify awarding localism points.

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<sup>9</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 *Media Bureau Announces NCE FM New Station and Major Change Filing Procedures for October 12 - 19, 2007 Window*, Public Notice, 22 FCC Rcd 15050, 15052 (MB 2007) ("Procedures Notice").

<sup>10</sup> See 47 C.F.R. § 73.7002(b).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See 47 C.F.R. § 73.7003.

<sup>14</sup> See 47 C.F.R. § 73.7003(b).

6. 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>15</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>16</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>17</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>18</sup> The Commission also has extended waiver treatment to low power FM ("LPFM") stations.<sup>19</sup>

7. 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>20</sup>

8. 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

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<sup>15</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>16</sup> See *NCE MO&O*, 16 FCC Rcd at 5095.

<sup>17</sup> *Id.* at 5102-03.

<sup>18</sup> See *Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified NCE FM Stations*, 22 FCC Rcd 6101, 6120 (2007) ("*NCE Omnibus*").

<sup>19</sup> See *Comparative Consideration of 52 Group of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Education FM Stations*, Memorandum Opinion and Order, 25 FCC Rcd 8793 (2010); *Comparative Consideration of 59 Group 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. 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>20</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, cannot qualify for the local diversity of ownership credit.

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>21</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.

9. 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.

10. 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>22</sup> The first tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant.<sup>23</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 in the count 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>24</sup> If that second factor fails to break the tie, we use mandatory timesharing as the tie-breaker of last resort.

### D. Timely Documentation of Comparative Qualifications.

11. The NCE application, FCC Form 340, is certification-based, but requires applicants to document their claims both by submitting supporting information to the Commission and placing this information in a local public file.<sup>25</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, every applicant claiming points for diversity of ownership must certify that no party to the application has an attributable interest in a station with an overlapping service contour to the proposed station, that its governing documents require that 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

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<sup>21</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>22</sup> 47 C.F.R. § 73.7003(c).

<sup>23</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>24</sup> See *NCE Omnibus*, 22 FCC Rcd at 6123.

<sup>25</sup> See *NCE Order*, 15 FCC Rcd at 7423.

documentation.”<sup>26</sup> Similar certifications and documents also are required of applicants claiming points as established local applicants.<sup>27</sup> 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 the supporting information referred to in the certification. While there is some flexibility in the type of documentation an applicant may provide, an applicant submitting no timely documentation at all is deemed not to have made a valid certification. In these cases, the particular points claimed by such applicants are not credited.

### III. POINT SYSTEM DETERMINATIONS

12. This Section contains narrative descriptions of our point system analyses in each mutually exclusive proceeding, organized chronologically by assigned group number. Most of the applications at issue in these proceedings are being considered for the first time. However, in a few cases, the Bureau or Commission previously considered the group and named a tentative selectee, and the tentative selection was followed by filings or events which required additional analyses. Unless otherwise noted, each component of the analysis is based on applicant-provided information.<sup>28</sup> We have provided readers with an Appendix that condenses the group-by-group narratives 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.

13. At the outset, we note that each group of applicants has had an opportunity to resolve application conflicts by settlement and technical amendment. In addition, we note that applicants that submitted within the October 2007 window were required to report their qualifications as of the date of application (or close of the filing window for already pending, non-cut-off applications). The applicants in Group 9901XP, however, were cut-off prior to the window and reported their maximum technical qualifications as of April 21, 2000, and non-technical qualifications as of June 4, 2001.<sup>29</sup> Any changes made thereafter may diminish, but cannot enhance, an applicant’s comparative position.

14. **Group 7.** Group 7 is comprised of two applicants proposing service to different communities in Alabama. TBTA Ministries (“TBTA”) proposes to serve McIntosh and Archangel Communications (“Archangel”) proposes to serve Mount Vernon. The Bureau previously conducted a

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<sup>26</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>27</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>28</sup> For example, 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 response 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 response to Question V(1) and (2), respectively.

<sup>29</sup> 47 C.F.R. 73.7003(f)(2). See *Supplements and Settlements to Pending Closed Groups of Noncommercial Educational Broadcast Applications Due by June 4, 2001*, Public Notice, 16 FCC Rcd 6893 (MB 2001).



threshold fair distribution analysis using numbers provided by the applicants and designated TBTA as tentative selectee because TBTA claimed to provide first NCE service to 5,011 people more than Archangel.<sup>30</sup> Subsequently, the applicants disputed each other's population numbers, which they had arrived at using somewhat different, but nevertheless acceptable, software and databases. The Bureau, using its own independently computed numbers, conducted a new threshold fair distribution analysis and determined that the TBTA and Archangel proposals are comparable.<sup>31</sup> Specifically, the Bureau determined that TBTA's first service to 7,495 people and combined first and second service to 10,357 people did not exceed by at least 5,000 people the proposed service of Archangel to populations of 3,026<sup>32</sup> and 7,137. Accordingly, the Bureau referred the proceeding to the Commission for a point hearing.

15. Neither applicant claims points as an established local applicant. Archangel claims two points for diversity of ownership. Neither applicant claims points as a statewide network. With respect to technical parameters, Archangel's proposed 60 dBu contour would encompass 2,674 square kilometers with a population of 20,620. TBTA's proposed 60 dBu contour would encompass 1,907 square kilometers with a population of 13,325. Archangel qualifies for two points under the best technical proposal criterion because its proposal will serve at least 25 percent more area and population than TBTA's proposal. Accordingly, Archangel is credited with a total of four points, and TBTA receives no points. Archangel is the tentative selectee in Group 7.

16. **Group 25.** This group consists of the mutually exclusive applications of Pataphysical Broadcasting Foundation, Inc. ("PBF"), Eschaton Foundation ("Eschaton"), and Calvary Chapel Santa Cruz ("CCSC"). Each proposes to serve a different community in California: Ben Lomond, Santa Cruz, and Scotts Valley, respectively. None claims that it would be eligible for a fair distribution preference. The Commission performed a point hearing analysis of the group in February 2010 and identified PBF as the tentative selectee.<sup>33</sup> On March 9, 2010, Eschaton filed an informal objection, which we find to have merit. Specifically, Eschaton demonstrates that the coverage area claimed by PBF, the basis for our award of one point to PBF for best technical proposal, was inflated because PBF erroneously included areas over water. Eschaton calculates that PBF's coverage area is approximately 236 square kilometers rather than the 661 square kilometers originally claimed. PBF has not refuted that information. Eschaton also demonstrates that the result of our analysis could potentially change if the correct information were used. Accordingly, we will perform a new points analysis with the corrected figures.

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<sup>30</sup> *Threshold Fair Distribution Analysis of 32 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 23 FCC Rcd 10213, 10215-16 (MB 2008). TBTA claimed a first service to a population of 8,788 and Archangel to a population of 2,777.

<sup>31</sup> The Bureau accepted Archangel's argument in a Petition to Deny the TBTA Application that the claims should be compared using an identical methodology, given that the applicant's use of slightly different methods resulted in a determination that was decisional by a difference of only 11 people. See *Lee G. Petro, Esq.*, Letter, 25 FCC Rcd 14362 (MB 2010).

<sup>32</sup> *Id.* The Commission recognizes a certain tension between the principle that applicants cannot increase their comparative claims and the fact that the Bureau's calculation of Archangel's first service at 3,026 people, exceeds the original claim of 2,777. Our mention of the higher number is solely for the purpose of making an "apples to apples" comparison. Use of the higher number for this purpose does not alter the outcome because TBTA would not prevail on first service regardless of whether it provided first service to 2,777 or 3,026 people. With respect to aggregated first plus second service, the Bureau's calculations for each applicant are less than either claimed originally.

<sup>33</sup> *Comparative Consideration of 59 Groups of Mutually Exclusive Applications*, 25 FCC Rcd at 1690.

17. Each applicant claims three points as an established local applicant and two points for diversity of ownership. PBF bases its diversity claim on a pledge to request cancellation of its authorization for translator station K207CN, Santa Cruz, California, upon the commencement of operation of the proposed full service station. No applicant claims points as a statewide network. PBF proposes a 60 dBu contour that would encompass approximately 236 square kilometers with a population of 116,959. Eschaton's and CCSC's proposed 60 dBu contours would respectively encompass 279 square kilometers with a population of 89,049, and 350 square kilometers with a population of 102,579. No applicant in the group qualifies for points under the best technical proposal criterion because none proposes to serve both the largest area and population. Accordingly, PBF, Eschaton, and CCSC are credited with a total of five points each, and will 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. Eschaton and CCSC certify respectively that each has no attributable interests in any radio authorization. PBF certifies that it has an attributable interest in three radio authorizations. Accordingly, PBF is eliminated. The second issue considered in a tie-breaker is the number of pending radio applications attributable to each applicant. Eschaton and CCSC certify that each has only one attributable application. Accordingly, we proceed to the tie-breaker of last resort – mandatory timesharing. Eschaton and CCSC are each tentative selectees in Group 25 on a timesharing basis.

19. **Group 44.** This group consists of mutually exclusive applications filed by Academy Media, Inc. (“Academy”) for Ouray, Colorado, and by San Miguel Educational Fund (“SMEF”) for Ridgway, Colorado. The Commission considered these applications previously in February 2010 and tentatively selected SMEF's application for grant. Academy filed a timely Petition to Deny the SMEF Application on March 8, 2010.<sup>34</sup> We find that the Petition has merit, and therefore will perform a new point system analysis with the corrected information.

20. In our previous analysis, we found that neither SMEF nor Academy was entitled to any points under the point system. That determination relied, in part, on our decision not to credit Academy with two points it had claimed for diversity of ownership. Specifically, we found that Academy's diversity showing was ineffective because it was based on an amendment of other broadcast holdings filed on March 20, 2008, after the close of the filing window. The Commission therefore applied tie-breaker criteria to the SMEF and Academy applications and tentatively selected SMEF in the tie-breaker.

21. In its Petition, Academy asserts that the Commission erred in finding that it had attempted to amend its diversity showing after the close of the filing window.<sup>35</sup> Rather, Academy contends, it showed that it was entitled to diversity points in its original application,<sup>36</sup> the amendment pertained to tie-breaker criteria – not diversity points, and it should have prevailed on points obviating the need to resort to tie-breaker procedures.<sup>37</sup>

22. We agree. Upon review of the record of Group 44, we conclude that the Commission erred in rejecting Academy's diversity claim. In support of its diversity claim, Academy's original

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<sup>34</sup> SMEF did not file an Opposition to the Petition.

<sup>35</sup> Academy Petition at 2.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 3. Academy states that its March 20, 2008, amendment was designed merely to correct its response to the tie-breaker questions in Section V of its Application. The amendment noted the grant of two Academy applications for construction permits for new FM facilities at Craig and Brush, Colorado.



application stated that “Academy Media, Inc. (AMI) qualifies for diversity of ownership credit since neither it nor its principal has any media interest or connection. AMI has also amended its by-laws to maintain its ownership diversity and has certified that it will not accept any new officers or directors who would create a conflict with its diversity claim. AMI is placing documentation of its diversity qualifications in its local public inspection file.”<sup>38</sup> Academy also attached governing documents containing Academy’s pledge to maintain this diversity. This showing was sufficient for Academy to receive two points under the local diversity of ownership criterion. Although Academy amended its application after close of the filing window to reflect changes in its broadcast holdings, its amendment did not pertain to any station with a service area that overlapped Academy’s Ouray proposal and did not attempt to supply any support which had previously been lacking. The post-filing window amendment noted the grant to Academy of two construction permits for distant FM facilities, as would be relevant to tie-breaker criteria, but not to diversity points.<sup>39</sup>

23. In light of the foregoing, we credit Academy with a total of two points. SMEF’s point total of zero remains unchanged. Thus, Academy prevails on the basis of points. We therefore rescind the portion of our February 2010 decision which tentatively selected SMEF by means of a tie-breaker and, instead, identify Academy as the tentative selectee in Group 44.

24. **Group 169.** The four applicants in this group propose service to different communities in New Hampshire. Emmaus Christian Healing Ministries (“Emmaus”) proposes to serve Barrington. Southwest Radio Church of the Air, Inc. (“SRCA”) proposes to serve Dover. Granite State Educational Fellowship (“GSEF”) and Northeast Gospel Broadcasting, Inc. (“NGB”) propose respectively to serve Northwood and Northwood Ridge, which we believe to be similarly-named, separate communities. When applicants propose different communities, the Commission must first determine whether any applicant is credited with a dispositive fair distribution preference. Emmaus, GSEF, and NGB each claim eligibility for a fair distribution preference.<sup>40</sup> SRCA does not and, therefore, is eliminated. None of the remaining applicants asserts a preference for first NCE service alone, relying solely on combined first and second NCE service population totals. Emmaus’s, GSEF’s, and NGB’s aggregated first and second NCE service to 12,019 people, 7,583 people, and 9,722 people, respectively are comparable because none exceeds the next best applicant by at least 5,000 people. Accordingly, they will proceed to a point hearing.

25. Emmaus claims three points as an established local applicant. GSEF and NGB do not. Emmaus and GSEF claim two points each for diversity of ownership. NGB certifies that it is not entitled to any points under this criterion. No applicant in this group claims points as a statewide network. With

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<sup>38</sup> See Academy Application at Exhibit 1. Academy attached to both its Application and Amended Application a “Resolution Amending the Bylaws of Academy Media, Inc. (“Resolution”). The Resolution states that Academy’s bylaws have been amended to provide that Academy will not, while its Application is pending and for at least four years of operation, seek consent from the Commission to obtain another radio station authorization which would have a principal community contour overlapping that of the Ouray station, elect or permit to serve as an officer or director of Academy any person who has an attributable interest in any such station, or take any other action that would jeopardize Academy’s entitlement to a diversity credit. As indicated above, such provisions are necessary for an application to be awarded diversity points.

<sup>39</sup> Academy Amended Application at Exhibit 4.

<sup>40</sup> See Emmaus, GSEF, and NGB Applications, Questions III(1), III(2), and associated exhibits. Emmaus’s 60 dBu contour encompasses 29,258 people, and its claimed aggregated first and second NCE service is 12,019 people. GSEF’s 60 dBu contour encompasses 11,941 people, and its claimed aggregated first and second NCE service is 7,583 people. NGB’s 60 dBu contour encompasses 23,981 people, and its claimed aggregated first and second NCE service is 9,722 people. Thus, each would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

respect to technical parameters, Emmaus's proposed 60 dBu contour would encompass 717 square kilometers with a population of 29,258. GSEF's proposed 60 dBu contour would encompass 394 square kilometers with a population of 11,941. NGB's proposed 60 dBu contour would encompass 545 square kilometers with a population of 23,981. Emmaus qualifies for one point as the best technical proposal because it proposes to serve at least ten percent more area and population than NGB's next best proposal. Accordingly, Emmaus is credited with a total of six points, GSEF with a total of two points, and NGB is not credited with any points. Emmaus is the tentative selectee in Group 169.

26. **Group 175.** This group consists of four mutually exclusive applications for different communities in New Mexico. Calvary Chapel of Albuquerque, Inc. ("CCA") proposes to serve Angel Fire. Eastern New Mexico University ("ENMU") proposes to serve Eagle Tail. Mountain Ambulance Service ("MAS") proposes to serve Penasco. St. Paul Cultural Broadcasting, Inc. ("SPCB") would serve Taos. When applicants propose different communities, the Commission must first determine whether any applicant is credited with a dispositive fair distribution preference. CCA, ENMU, and MAS each claim eligibility for a fair distribution preference.<sup>41</sup> SPCB does not and, accordingly, is eliminated. CCA's, ENMU's, and MAS's respective first NCE service claims are 11,254, 10,570, and 2,056 people. MAS is eliminated because it proposes new first NCE service to at least 5,000 fewer people than ENMU. The first service claims of CCA and ENMU are comparable. CCA and ENMU claim an aggregated first and second NCE service to 13,627 people (11,254 first service plus 2,383 second service) and 10,570 people (all first service), respectively. These second service claims are comparable. Accordingly, CCA and ENMU will proceed to a point hearing analysis.

27. ENMU claims three points as an established local applicant. CCA certifies that it is not entitled to any points under this criterion. CCA claims two points for diversity of ownership. ENMU certifies that it is not entitled to any points under this criterion.<sup>42</sup> ENMU claims two points as a statewide network. CCA does not. With respect to technical parameters, CCA's proposed 60 dBu contour would encompass 10,550 square kilometers with a population of 38,901. ENMU's proposed 60 dBu contour would encompass 2,830 square kilometers with a population of 10,570. CCA qualifies for two points as the best technical proposal because it proposes to serve at least twenty-five percent more area and population than ENMU. Accordingly, CCA is credited with four points, and ENMU is credited with a total of five points. Thus, ENMU is the tentative selectee in Group 175.

28. **Group 197.** This group consists of three mutually exclusive applications for different communities in Ohio. Living Bread Radio, Inc. ("LBR") proposes to serve Boardman. Pensacola Christian College, Inc. ("PCC") proposes to serve Poland. Bridgebuilders International Leadership ("BIL") proposes to serve Youngstown. No applicant in this group claims that it is eligible for a fair distribution preference and, therefore, we proceed directly to a point hearing analysis.

29. No applicant in this group claims any points as an established local applicant. Each applicant in this group claims two points for diversity of ownership. However, PCC and BIL do not support their claims and, accordingly, will not receive points under this criterion. None of the applicants claims points as a statewide network. With respect to technical parameters, LBR's proposed 60 dBu

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<sup>41</sup> See CCA, ENMU, and MAS Applications, Questions III(1), III(2), and associated exhibits. CCA's 60 dBu contour encompasses 38,901 people, and its claimed aggregated first and second NCE service is 13,637 people. ENMU's 60 dBu contour encompasses 10,570 people, and its claimed aggregated first and second NCE service is all 10,570 people. MAS's 60 dBu contour encompasses 4,501 people, and its claimed aggregated first and second NCE service is 4,398 people. Thus, each would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>42</sup> ENMU, while not claiming points for diversity of ownership, notes that the proposed station would replace its existing FM translator, K284AC, Eagle Tail, New Mexico.

contour would encompass 215 square kilometers with a population of 156,327. PCC's proposed 60 dBu contour would encompass 165 square kilometers with a population of 144,659. BIL's proposed 60 dBu contour would encompass 250 square kilometers with a population of 162,765. No applicant qualifies for any points as the best technical proposal because the applicant that would serve the largest area and population would not serve at least ten percent more people than the next best applicant. Accordingly, LBR is credited with a total of two points. PCC and BIL are not credited with any points. Thus, LBR is the tentative selectee in Group 197.

30. **Group 207.** This group consists of the mutually exclusive applications of Tillicum Foundation ("Tillicum") for Cannon Beach, Oregon and KBPS Public Radio Foundation ("KBPS") for Manzanita, Oregon. When applicants propose different communities, the Commission must first determine whether any applicant is credited with a dispositive fair distribution preference. Each applicant in this group claims eligibility for a fair distribution preference.<sup>43</sup> Neither applicant asserts a preference for first NCE service alone, relying solely on combined first and second NCE service population totals. Tillicum proposes an aggregated first and second NCE service to 3,833 people (168 first service plus 3,665 second service). KBPS proposes an aggregated first and second NCE service to 3,868 people (168 first service plus 3,700 second service). The applicants' service claims are comparable because neither proposes new service to at least 5,000 people more than the other. Accordingly, they will proceed to a point hearing.

31. Tillicum certifies that it is entitled to three points as an established local applicant. KBPS does not claim any points under this criterion. Each applicant in this group claims two points for diversity of ownership. Tillicum bases its diversity claim on a pledge to cancel its license for FM translator station K205EU, Wheeler, Oregon. Neither applicant claims points as a statewide network. With respect to technical parameters, Tillicum's proposed 60 dBu contour would encompass 393 square kilometers with a population of 7,472. KBPS' proposed 60 dBu contour would encompass 407 square kilometers with a population of 7,531. Neither applicant qualifies for any points as the best technical proposal because neither proposes to serve at least ten percent more area and population than the other. Accordingly, Tillicum is credited with a total of five points, and KBPS is credited with a total of two points. Thus, Tillicum is the tentative selectee in Group 207.

32. **Group 217.** This group consists of the mutually exclusive applications of Muncy Hills Broadcasting, Inc. ("MHB") for Loganville, Pennsylvania and Cedar Ridge Children's Home and School, Inc. ("Cedar Ridge") for York, Pennsylvania. Neither claims that it would be eligible for a fair distribution preference. Neither claims any points as an established local applicant. Each claims two points for diversity of ownership. Neither applicant claims points as a statewide network. MHB's proposed 60 dBu contour would encompass 503 square kilometers with a population of 168,282. Cedar Ridge's proposed 60 dBu contour would encompass 559 square kilometers with a population of 176,305. Neither applicant in the group qualifies for points under the best technical proposal criterion because neither proposes to serve at least ten percent more area and population than the other. Accordingly, MHB and Cedar Ridge are credited with a total of two points each, and will proceed to a tie-breaker.

33. 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. MHB certifies that it has an attributable interest in three radio authorizations. Cedar Ridge

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<sup>43</sup> See Tillicum and KPBS Applications, Questions III(1), III(2), and associated exhibits. Tillicum's 60 dBu contour encompasses 7,472 people, and its claimed aggregated first and second NCE service is 3,833 people. KPBS's 60 dBu contour encompasses 7,531 people, and its claimed aggregated first and second NCE service is 3,868 people. Thus, each would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

certifies that it has an attributable interest in four radio authorizations. MHB prevails on the basis of this first tie-breaker, and is the tentative selectee in Group 217.

34. **Group 246.** This group consists of the mutually exclusive applications of Millenium Broadcasting Corp. (“MBC”) for Clarksville, Texas, and Educational Media Foundation (“EMF”) for Mt. Pleasant, Texas. When applicants propose different communities, the Commission must first determine whether any applicant is credited with a dispositive fair distribution preference. EMF does not claim any fair distribution preference. MBC claims eligibility for a fair distribution preference, by supplying a map purporting to show an area of new NCE service but has not supplied any corresponding population numbers. Thus, MBC has not shown that it would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people. Neither applicant in this group is entitled to a fair distribution preference and, accordingly, will proceed to a point hearing analysis.

35. MBC claims three points as an established local applicant. EMF certifies that it is not entitled to any points under this criterion. Each claims two points for diversity of ownership. However, MBC does not support its claim by showing that its governing documents require it to maintain diversity in the future and, thus, will not receive any points under this criterion. Neither claims any points as a statewide network. With respect to technical parameters, MBC’s proposed 60 dBu contour would encompass 3,458 square kilometers with a population of 23,023. EMF’s proposed 60 dBu contour would encompass 2,105 square kilometers with a population of 32,826. Neither qualifies for any points as the best technical proposal because neither proposes to serve at least ten percent more area and population than the other. Accordingly, MBC is credited with a total of three points, and EMF is credited with two points. Thus, MBC is the tentative selectee in Group 246.

36. **Group 314(A and C).** The Commission previously considered Group 314 and tentatively selected the application of People of Progress, Inc. (“POP”) for a new station at Shasta, California.<sup>44</sup> Two of the non-prevailing applicants challenged that tentative decision. We find that one raises issues that merit additional Commission action herein, and that the other does not.

37. One Ministries, Inc. (“OMI”) filed a Petition for Reconsideration on July 27, 2010, premised on a mistaken belief that the Commission had granted POP’s application and dismissed OMI’s. OMI argues that its application should be reinstated and granted because it is not mutually exclusive with POP’s application. The order that OMI contests did not, however, act on any application. The order was an interlocutory decision that merely identified POP as a *tentative* selectee. We will dismiss OMI’s filing pursuant to Section 1.106(a)(1) of the Commission’s Rules, which specifically prohibits petitions for reconsideration of interlocutory actions.<sup>45</sup> We observe that on August 17, 2010, the month after OMI’s filing, the Commission granted POP’s application, while leaving OMI’s application in pending status until the Commission could rule on its concerns. Had we addressed the merits of OMI’s petition, we would have denied the petition because the Commission has long had a “one-grant-per-group” policy under which it will not comparatively select more than one applicant from a mutually exclusive NCE group, even if a particular application is not in direct technical conflict with the group’s primary selectee.<sup>46</sup>

<sup>44</sup> See *Comparative Consideration of 52 Group of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Education FM Stations*, Memorandum Opinion and Order, 25 FCC Rcd 8793 (2010)

<sup>45</sup> 47 C.F.R. §1.106(a)(1).

<sup>46</sup> The Commission’s policy is based on comparative selection of applicants based on qualifications rather than geography. See *NCE MO&O*, 16 FCC Rcd at 5104-05. (“... after the best qualified applicant is selected, it is possible that remaining applicants that are not mutually exclusive with this primary selectee and thus potentially  
(continued...)”)

38. Ink People, Inc. (“Ink”), another non-prevailing applicant from the original analysis of Group 314, filed an objection that makes a factually distinct argument for potential grant of more than one application from Group 314. Ink argues that the composition of the group that the Commission analyzed was erroneous because a series of applicant-initiated actions had previously broken the group apart. Specifically, at the time that the Commission’s staff first identified Group 314 in 2008, the group was composed of 12 applications.<sup>47</sup> By late 2009, two of those applications had been granted and two dismissed, as a result of a technical solution and a settlement. The Commission analyzed the remaining eight applications as a single group in 2010. According to Ink, however, the settlements and technical amendments had broken those remaining applications into two independent groups of four applications prior to Commission analysis. Ink identifies the remaining groups as Groups 314A and 314C (relying on nomenclature submitted in connection with a settlement which identified the settled group as Group 314B). To be consistent, we will adopt those group names as well.

39. Ink does not contest the proposed grant of POP’s application from the first subgroup (Group 314A), but argues that the four applicants in the second subgroup (Group 314C) should be analyzed separately, potentially resulting in grant of an additional application. Ink recognizes the Commission’s one-grant-per-group policy and, therefore, emphasizes that it is not relying in any way upon action taken in a Commission comparative analysis. Rather, Ink states that the applications at issue became detached from the larger group as the result of applicant-initiated settlements and technical amendments, which resulted in grants of other applications.<sup>48</sup>

40. The Commission generally has relied upon applicants to inform it of bifurcations that arise as secondary impacts of settlements and technical amendments, especially in larger groups where an amendment by one applicant could otherwise require considerable resources to reanalyze the mutual exclusivity of each remaining application. Unless highlighted as part of a settlement or technical solution or thereafter, the Commission presumes that any remaining applications continue to comprise a single mutually exclusive group. Here, the applicants attempted to alert the Commission that secondary groups would result, but the information did not carry forward because it was presented in engineering exhibits associated with applications which did not survive the settlement and pertained to applications that were not parties to the settlement. Ink timely brought these matters to our attention by filing an objection, and is correct that applicant-initiated actions resulting in grants of other applications broke Group 314 into smaller subgroups. Under similar circumstances, brought to our attention in connection with or

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secondary selectees, may also be significantly inferior to other applicants that are eliminated because they *are* mutually exclusive with the primary selectee. Rather than issue authorizations to applicants whose potential for selection stems primarily from their position in the mutually exclusive chain, we believe it is appropriate to dismiss all of the remaining applicants and permit them to file again in the next filing window.”) (emphasis in original). *See also, Comparative Consideration of 59 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, 25 FCC Rcd 1681,1716 (2010) (“[W]e direct the staff to deny petitions for reconsideration based on the theory that the dismissed application is not mutually exclusive with the granted application.”). The policy is inapplicable to grants that are possible due to matters which do not rely on a qualitative comparative decision by the Commission, *i.e.*, settlements, technical solutions, and voluntary withdrawal of an application without consideration.

<sup>47</sup> *See Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the October 2007 Filing Window*, Public Notice, 23 FCC Rcd 9508 (2008).

<sup>48</sup> Partial settlements and technical amendments within a group are considered, provided that they result in the grant of at least one application in that group as a singleton. *See Window Opened to Expedite Grant of New NCE FM Station Construction Permits*, Public Notice, 22 FCC Rcd 19438 (MB 2007). Actions that merely attempt to break a group into smaller components without grant of an application are not acceptable. *Id.*



immediately following a settlement, technical amendment, and/or voluntary withdrawal of an application without settlement, the Commission has analyzed remaining applications as separate subgroups.<sup>49</sup> Such situations do not trigger the one-grant-per-group policy because the potential additional grants do not stem from any qualitative comparative decision. Had the Commission known, at the time of the original Group 314 point hearing, that the eight remaining applications were two distinct groups of four, the Commission would have analyzed Groups 314A and 314C separately. Accordingly, we revisit the groups in response to Ink's objection to the original single-group analysis.

41. POP's application, which received the highest point total in eight-member Group 314, also would have prevailed in an analysis of four-member Group 314A.<sup>50</sup> In August 2010, the staff granted POP's application and dismissed the other three applications in Group 314A.

42. In the other subgroup, Group 314C, the applicants and their respective point totals from our prior analysis are: Centro Cristiano de Fe, Inc. ("Fe") for Eureka, zero points; OMI, two points; Iglesia Alto Refugio ("IAR") for Fortuna, zero points; and Ink, five points.<sup>51</sup> Fe-Eureka and IAR were dismissed on August 9, 2010 pursuant to the previous comparative analysis of Group 314, as an eight-member group. Had the Commission originally analyzed all four applicants as a separate group, Ink's would have prevailed in Group 314C. The analysis of best technical proposal – the only point system element that can be altered by a differing group composition – would not have changed. Specifically, no applicant in the four-member subgroup would have qualified for any points as the best technical proposal because none would have served both the largest area and population.<sup>52</sup> Ink is the tentative selectee in Group 314C.

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<sup>49</sup> E.g., *Comparative Consideration of 24 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 25 FCC Rcd 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*, Memorandum Opinion and Order, 25 FCC Rcd 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*, Memorandum Opinion and Order, 25 FCC Rcd 8793 at nn.41, 46, and 70 (2010); *Comparative Consideration of 22 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 24 FCC Rcd 14531 at nn. 26, 40 (2009).

<sup>50</sup> No applicant in the group claimed to be eligible for a fair distribution preference. The applicants and their respective point totals from our prior analysis are: POP, seven points; Centro Cristiano de Fe, Inc. ("Fe") for Weaverville, zero points; Centro Cristiano Sion ("Sion"), two points; and Calvary Chapel of Red Bluff (CCRB"), five points. Each point total would have remained valid despite the smaller group composition. The method by which POP received two points for best technical proposal would, however, have differed slightly without changing the result. Originally, the Commission compared POP's population to the next best population proposal of OMI and POP's area proposal to the next largest area of Fe for Weaverville. Now that OMI is in a different subgroup, POP's population and area would each have been compared the next best proposals of Fe. To illustrate these facts, we have included a points analysis of Group 314A in the appendix to this Order. However, as noted elsewhere, none of the applications in Group 314A remain pending.

<sup>51</sup> No applicant claimed to be eligible for a fair distribution preference.

<sup>52</sup> We observe that, had we eliminated the two recently-dismissed applicants from the analysis, OMI would arguably have presented the best technical proposal because OMI proposes to serve at least 25 percent more area and population than Ink, the only other remaining applicant. However, analyzing the group in such a manner would conflict with our one-grant-per-group policy because the Fe-Eureka and IAR applications were dismissed pursuant to a Commission-conducted comparative analysis, not through an applicant-initiated settlement agreement or technical solution. Moreover, the additional two points potentially gained by making the best technical proposal could, at most, raise OMI's point total to four, which would still be insufficient to equal or exceed Ink's five-point total.



43. **Group 382.** This group consists of 12 applications proposing service to six different communities in Nebraska and Wyoming. Four applications propose to serve Alliance, Nebraska: Mission Nebraska, Inc. (“MNI”), Bethesda Christian Broadcasting (“BCB”), and Iglesia Bethel de Las Asambleas de Dios de Mexico (“IBLAD”) which has two Alliance applications proposing different frequencies. Three applications propose service to Scottsbluff, Nebraska: RV Ministries (“RV”), Bible Broadcasting Network, Inc. (“BBN”), and Pearl Communications Group (“Pearl”). Two applicants would serve Chadron, Nebraska: American Family Association (“AFA”) and Kansas Catholic Education Radio Corp. (“KCER”). The other applicants are: University of Wyoming (“UW”) for Torrington, Wyoming, Oregon Trail Arts & Humanities League, Inc. (“Oregon Trail”) for Gering, Nebraska, and Better Life Ministries (“BLM”) for Pine Bluffs, Nebraska.

44. When applicants propose different communities, the Commission must first determine whether any applicant is credited with a dispositive fair distribution preference. MNI, AFA, KCER, BCB, and UW each claim eligibility for a fair distribution preference.<sup>53</sup> Oregon Trail, RV, IBLAD (both applications), BBN, Pearl, and BLM do not and, accordingly, are eliminated. KCER is the only applicant in the group that claims it would provide a first NCE FM service. KCER’s claim to provide such service to 8,976 people is erroneous because NCE FM service is already provided to the area by KCNE-FM and KTNE-FM. KCER should have claimed to provide a second NCE service to this population, and we will treat its claim accordingly. The other applicants’ respectively claim to provide aggregated first and second NCE service to the following populations: MNI, 12,988; AFA, 6,931; BCB, 10,306, and UW, 10,210. All fair distribution claims are comparable because none exceeds the next largest proposal by at least 5,000 people. Accordingly, MNI, AFA, KCER, BCB, and UW will proceed to a point hearing analysis.

45. UW claims that it qualifies for three points as an established local applicant. MNI, AFA, KCER, and BCB do not. AFA, KCER, and BCB claim two points each for diversity of ownership. UW and MNI certify that each is not entitled to any points under this criterion. None claims points as a statewide network. With respect to technical parameters, the applicants’ proposed 60 dBu contours would encompass areas and populations as follows: MNI, 6,825 square kilometers with a population of 17,601; AFA 1,697 square kilometers with a population of 7,018; KCER, 3,254 square kilometers with a population of 9,007; BCB 1,182 square kilometers with a population of 10,306; and UW, 823 square kilometers with a population of 10,256. MNI qualifies for two points under the best technical proposal criterion because its proposal would serve at least 25 percent more area and population than the next best area of KCER and the next best population of BCB. Accordingly, the following applicants are each credited with a total of two points: MNI, AFA, KCER, and BCB. UW is credited with a total of three points. UW is the tentative selectee in Group 382.

46. **Group 506.** This group is comprised of 15 applications proposing service to 12 different communities in Arizona and California. Arizona Western College (“AWC”) and Centro Evangelico Broadcasting Ministry (“CEBM”) would each serve Quartzsite, Arizona. Three applicants propose to serve Desert Center, California: The Youth Foundation & Center of Imperial Valley, Inc. (“YFCIV”), The Association for Community Education, Inc. (“ACE”), and Centro Cristiano Cosecha Final (“CCCF”).

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<sup>53</sup> See MNI, AFA, KCER, BCB, and UW Applications, Questions III(1), III(2), and associated exhibits. MNI’s 60 dBu contour encompasses 17,601 people, and its claimed aggregated first and second NCE service is 12,988 people. AFA’s 60 dBu contour encompasses 7,018 people, and its claimed aggregated first and second NCE service is 6,931 people. KCER’s 60 dBu contour encompasses 9,007 people, and its claimed aggregated first and second NCE service is 8,976 people. BCB’s 60 dBu contour encompasses 10,306 people, and its claimed aggregated first and second NCE service is all 10,306 people. UW’s 60 dBu contour encompasses 10,256 people, and its claimed aggregated first and second NCE service is 10,210 people. Thus, each would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

The other applicants, each proposing service in California, are: Andres Serranos Ministries (“Serranos”) for Acolita; Reachout Ministries (“Reachout”) for Yucca Valley; Centro Cristiano Vida Abundante (“CCVA”) for Salton; Living Proof, Inc. (“LPI”) for Cactus City; Centro Palebra de Fe Church (“Fe”) for Mormar; California State University, Long Beach Foundation (“CSU-LB”) for Twentynine Palms; San Bernardino Community College District (“SBCCD”) for Coachella; Treehouse One, Inc. (“Treehouse”) for Blythe; and De la Cruz International Ministries, Inc. (“DCIM”), which filed two applications, one to serve Palo Verde and the other for Blythe.

47. In six of the 15 applications, the applicant certifies that it is eligible for a fair distribution preference.<sup>54</sup> Serranos, YFCIV, ACE, CCVA, Fe, DCIM (both proposals), CCCF, and Treehouse do not and, accordingly, are each eliminated. Three applicants claim a first service preference. LPI, SCU-LB, and SBCCD do not, and are therefore each eliminated. Reachout’s first service claim is mistaken because it did not consider the construction permit for KRTM(FM), Yucca Valley, California (File No. BPED-19981013MB). Accordingly, the only valid first service claims are those of AWC and CEBM, both of which propose to serve the same community of Quartzsite, Arizona. Accordingly, the AWC and CEBM applications will proceed to a point system analysis.

48. AWC claims three points as an established local applicant. CEBM does not. CEBM asserts that it is entitled to two points for diversity of ownership, but does not support its diversity claim. AWC certifies that it is not entitled to points under this criterion. Accordingly, neither applicant will receive points for diversity. Neither claims points as a statewide network. With respect to technical parameters, AWC’s proposed 60 dBu contour would encompass 2,407 square kilometers with a population of 20,104. CEBM’s proposed 60 dBu contour would encompass 2,358 square kilometers with a population of 4,789. Neither applicant qualifies for any points under the best technical proposal criterion because neither would serve at least ten percent more area and population than the other. Accordingly, AWC is credited with a total of three points, and CEBM is not credited with any points.<sup>55</sup> AWC is the tentative selectee in Group 506.

49. **Group 516.** This group originally consisted of 19 applications proposing service to 17 communities in Massachusetts. Upon preliminary analysis, the staff determined that an application by Emerson College (“Emerson”) to serve Barnstable made the best fair distribution showing.<sup>56</sup> However, the staff dismissed Emerson’s application as unacceptable for filing on March 23, 2009 because it failed to protect the signal of TV Channel 6 station WLNE-TV, Bedford, Massachusetts. Emerson’s pending Application for Review, which seeks reinstatement, has the potential to alter the composition of Group 516. Accordingly, we consider Emerson’s filing before undertaking any comparative analysis of the group.

50. It is uncontested that Emerson’s initial proposal did not comply with Section 73.525 of the Rules with regard to the operation of TV Channel 6 station WLNE-TV. Emerson argues, however,

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<sup>54</sup> See AWC, CEBM, Reachout, LPI, CSU-LB, and SBCCD Applications, Questions III(1), III(2), and associated exhibits. AWC claims that it would provide aggregated first and second NCE service to all 20,104 of the 20,104 people encompassed within its proposed 60 dBu contour; CEBM to all 4,789 of the 4,789 people; Reachout to all 61,428 of the 61,428 people; LPI to 5,480 of the 8,507 people; CSU-LB to 55,946 of the 66,311 people; and SBCCD to 19,056 of the 105,924 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>55</sup> Had the Commission accepted CEBM’s claim of two diversity points, AWC nevertheless would have prevailed because CEBM’s claimed total of two points would not exceed AWC’s three-point total.

<sup>56</sup> Emerson’s proposal to provide an aggregated first and second NCE service to a population of 121,055 exceeded by at least 5,000 people that of the next best proposal.

that compliance with that rule has become moot because WLNE-TV was required to cease operations on analog Channel 6 by June 12, 2009, pursuant to the digital television transition. Emerson supplemented its filing on June 12, 2009 by submitting an agreement with the TV Channel 6 station.

51. Certain technical acceptability defects in broadcast applications can be cured while an application is pending or in connection with a timely filed petition for reconsideration, either by amending the proposal or by identifying changed circumstances that eliminate the rule violation.<sup>57</sup> A dismissed NCE applicant has one opportunity, within 30 days of dismissal, to file a curative amendment that eliminates all application defects.<sup>58</sup> In the case of Emerson's application, which was dismissed by public notice on March 26, 2009, all defects needed to be cured by April 26, 2009. The Section 73.525 violation was not cured by that date.

52. On April 1, 2009, the Media Bureau released a Public Notice setting forth NCE FM/TV Channel 6 processing policies.<sup>59</sup> The Public Notice stated that Section 73.525 would continue to apply to all NCE FM reserved band applications until such time as the Commission expressly stated otherwise, regardless of the date on which a potentially impacted television Channel 6 station terminated analog broadcast service. As of the April 26, 2009, deadline for curative amendments to Emerson's application, Emerson had not submitted an unconditional agreement with WLNE-TV. Emerson did not submit such an agreement until June 12, 2009, the date of the digital transition. Section 73.525 remained in force until October 27, 2009, the announced date when the Bureau began accepting applications premised on the termination of analog TV Channel 6 transmissions. The Public Notice announcing the date specifically cautioned that applications filed prior to October 27, 2009, that did not comply with Section 73.525 would be subject to dismissal.<sup>60</sup> Because Emerson submitted its agreement with WLNE-TV after April 26, 2009, Emerson failed to cure the defects in its application on a timely basis. Thus, we will not consider Emerson's application, as amended, in our comparative analysis.

53. These processing policies are intended to promote the fair and transparent consideration of all applications to use increasingly scarce spectrum. Other applicants in this group complied with Section 73.525 and fully protected WLNE-TV. Emerson's Section 73.525 violation allowed it to propose service to areas currently receiving no NCE aural service, and potentially to claim a fair distribution preference that applicants complying with Section 73.525 were unable to provide. Acceptance of Emerson's application thus would be fundamentally unfair to the rule-compliant competing applicants in Group 516. It could also foreclose filing opportunities in future windows for potential applicants that chose to defer filings based on the recognition that such filings would not comply with the Rules. Accordingly, we determine that Emerson's application was properly dismissed and will not reinstate it.<sup>61</sup> The remaining applicants in the group will proceed to a comparative analysis.

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<sup>57</sup> See 47 C.F.R. § 73.3522(b).

<sup>58</sup> *Id.*; 47 C.F.R. § 1.65(a).

<sup>59</sup> See *Media Bureau Provides Guidance to NCE FM Stations Regarding Television Channel 6 Protection Requirements*, 24 FCC Rcd 3916 (2009).

<sup>60</sup> See *Media Bureau Establishes October 29, 2009, Initial Filing Date for Acceptance of Certain Noncommercial Educational FM Station Minor Change Applications*, Public Notice, 24 FCC Rcd 12598 (2009).

<sup>61</sup> See *John Joseph McVeigh*, Letter, Ref, 1800B3-SS (MB rel. Apr. 6, 2010) (denying waiver to applicant that did not correct TV Channel 6 violation within 30 days of dismissal). Compare *Lauren A. Colby, Esq.*, Letter, 25 FCC Rcd 7376 (MB 2010) (applicant corrected TV Channel 6 violation within 30 days of dismissal).

54. The remaining 18 applicants in Group 516 propose service to 15 Massachusetts communities. Two applicants propose to serve Nantucket: Connecticut River Educational Radio, Inc. (“CRER”) and Nantucket Public Radio, Inc. (“NPRI”). CRER and NPRI each have another application in the group, respectively proposing service to Martha’s Vineyard and Harwich Port. Two applicants propose to serve Eastham: WGBH Educational Foundation (“WGBH”) and Executive Committee of Trustees, Boston University (“BU”). BU also has a second application in the group proposing service to Sagamore. Home Improvement Ministries (“HIM”) has two applications in the group, one for Barnstable and the other for Brewster. Two applicants propose service to Orleans: Horizon Christian Fellowship (“Horizon”) and Ocean Side Broadcasting, Inc. (“OSB”). Horizon also filed an application for East Falmouth. The other applicants are: Athens Christian Radio, Inc. (“ACR”) for Provincetown; Cape Christian Broadcasting, Inc. (“CBI”) for Mashpee; Cape Cod Community Television (“CCCT”) for South Yarmouth; Centro de Intercession y Adoracion Internacional, Inc. (“CIAI”) for East Orleans; Cape Cod Christian Broadcasting (“CCCB”) for East Harwich; and Foothills Public Radio, Inc. (“Foothills”) for Oak Bluffs.

55. Six applicants do not claim any fair distribution preference. Those six (HIM-Barnstable, NPRI-Nantucket, CIAI, OSB, CRER, and Foothills) are eliminated because applicants for different communities certify eligibility for a fair distribution preference.<sup>62</sup> Of the twelve applicants claiming a fair distribution preference, seven claim to provide a first NCE service and five certify that they are not entitled to a preference based on first NCE service. Those claiming no first service preference (CBI, HCB-East Falmouth, BU-Sagamore, NPRI-Harwich Port, and CCCB) are dismissed. The first service claims of the remaining applicants are: HIM-Brewster, 31,710 people; ACR, 2,124 people; HCF-Orleans, 12,526 people; BU-Eastham, 31,583 people; WGBH, 20,100 people; CCCT, 19,825 people; and CRER-Martha’s Vineyard, 3,347 people. ACR, HCF-Orleans, WGBH, CCCT, and CRER-Martha’s Vineyard are eliminated because they would provide a new first service to at least 5,000 fewer people than the next best claim for a different community. HIM-Brewster and BU-Eastham are comparable on first service. With respect to aggregated first and second service, HIM-Brewster would serve 95,208 people and BU-Eastham 94,557 people. These claims are comparable because neither would provide a new first and second service to at least 5,000 more people than the other. Accordingly, HIM-Brewster and BU-Eastham will proceed to a point hearing analysis.

56. Neither applicant claims any points as an established local applicant. Each asserts that it is entitled to two points for diversity of ownership, but neither supports its diversity claim. Accordingly, neither will receive any points for diversity. Neither claims points as a statewide network. With respect to technical parameters, HIM-Brewster’s proposed 60 dBu contour would encompass 538 square kilometers with a population of 95,298. BU-Eastham’s proposed 60 dBu contour would encompass 577 square kilometers with a population of 94,627. Neither applicant qualifies for any points under the best technical proposal criterion because neither would serve at least ten percent more area and population than the other. Accordingly, neither applicant receives any points and must proceed to a tie-breaker.

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<sup>62</sup> See HIM-Brewster, ACR, CBI, HCF (both applications), BU (both applications), WGBH, CCCT, NPRI-Harwich Port, CCCB, and CRER-Martha’s Vineyard Applications, Questions III(1), III(2), and associated exhibits. HIM-Brewster claims that it would provide aggregated first and second NCE service to 95,208 of the 95,298 people encompassed within its proposed 60 dBu contour; ACR to 8,834 of the 8,834 people; CBI to 19,069 of the 33,058 people; HCB-East Falmouth to 25,965 of the 50,031 people; HCB-Orleans to 40,493 of the 40,493 people; BU-Sagamore to 15,213 of the 38,255 people; BU-Eastham to 94,557 of the 94,627 people; WGBH to 73,874 of the 132,298 people; CCCT to 19,825 of the 95,108 people; NPRI-Harwich Port to all 35,581 of the 35,581 people; CCCB to all 20,929 of the 20,929 people; and CRER-Martha’s Vineyard to 4,394 of the 25,080 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.

57. 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. HIM-Brewster certifies that it has no attributable interests in any radio authorization. BU certifies that it has an attributable interest in four radio authorizations. Accordingly, HIM-Brewster is the tentative selectee in Group 516.

58. **Group 522.** This group consists of 13 applications proposing service to eight different communities in Massachusetts, New Hampshire, and Vermont. Two applicants propose service to Athol, Massachusetts: Athol Orange Community Television, Inc. (“AOCT”) and The Executive Committee of the Trustees of Boston University (“BU Trustees”). Franklin County Christian Ministries (“Franklin”) proposes to serve New Salem, Massachusetts. Five applicants would serve Keene, New Hampshire: Christian Mix Radio, Inc. (“CMR”), Southwest Radio Church of the Air, Inc. (“SRCA”), Vinikoor Family Foundation, Inc. (“Vinikoor”), Granite State Educational Fellowship (“Granite”), and Mary V. Harris Foundation (“MVHF”). The other applicants proposing service in New Hampshire are: The Kingdom Christian Ministries (“KCM”) for Dublin; New Hampshire Public Radio, Incorporated (“NHPR”) for Peterborough; and WAMC (“WAMC”) for West Swanzey. The Vermont applicants are: Cornerstone Community Radio, Inc. (“Cornerstone”) for Battleboro and Franklin for White River Junction.

59. In eight of the 13 applications, the applicant claims that it is eligible for a fair distribution preference.<sup>63</sup> The following five applicants certify that they are not eligible for a preference, and accordingly, are each eliminated: Franklin-New Salem, SRCA, Vinikoor, Granite, and Franklin-White River Junction. Five of the remaining eight applicants claim a first NCE service preference. The other three applicants (AOCT, BU Trustees, and CMR) do not and, accordingly, are each eliminated. KCM claims that it would provide first NCE service to 15,953 people; NHPR to 5,056 people; WAMC to 10,277 people; MVHF to 11,084 people; and Cornerstone to 10,347 people. NHPR is eliminated because WAMC’s next best proposal for a different community will serve at least 5,000 more people. The first service proposals of remaining four applicants are comparable, and we therefore consider the applicants’ combined first and second NCE service population totals. KCM certifies that it would provide a first or second NCE service to 35,193 people (15,953 first service plus 19,240 second service); WAMC to 50,797 people (10,277 first service plus 40,520 second service); MVHF to 35,165 people (11,084 first service plus 24,081 second service); and Cornerstone to 19,388 people (10,347 first service plus 9,041 second service). Although WAMC’s proposal would ostensibly prevail by providing new service to at least 5,000 people more than KCM’s next best proposal, we find that WAMC’s claim is erroneous. WAMC significantly overstates its second service by failing to consider the authorization of WNMH(FM). Correcting for this error, WAMC would provide aggregated first plus second service to about half the population claimed, and its service would be comparable to that claimed by Cornerstone. WAMC and Cornerstone are eliminated because they would provide a new first and second service to at least 5,000 fewer people than the next best claim of MVHF. The claims of MVHF and KCM are comparable because neither exceeds the other by at least 5,000 people. Thus, those two applicants will proceed to a point hearing analysis.

<sup>63</sup> See AOCT, BU Trustees, CMR, KCM, NHPR, WAMC, MVHF, and Cornerstone Applications, Questions III(1), III(2), and associated exhibits. AOCT claims that it would provide aggregated first and second NCE service to 20,968 of the 69,007 people encompassed within its proposed 60 dBu contour; BU Trustees to 19,900 of the 22,929 people; CMR to 27,183 of the 75,309 people; KCM to 35,193 of the 91,485 people; NHPR to all 10,721 of the 10,721 people; WAMC to 50,797 of the 102,391 people; MVHF to 35,165 of the 109,289 people; and Cornerstone to 19,388 of the 96,316 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.



60. KCM claims three points as an established local applicant. MVHF certifies that it is not entitled to any points under this criterion. KCM and MVHF claim two points each for diversity of ownership. KCM bases its diversity claim on a pledge to divest its authorization for LPFM station WFCB-LP. No applicant claims points as a statewide network. KCM proposes a 60 dBu contour that would encompass 2,118 square kilometers with a population of 91,485. MVHF's proposed 60 dBu contour would encompass 3,051 square kilometers with a population of 109,289. KCM qualifies for one point under the best technical proposal criterion because it would serve at least ten percent more area and population than MVHF. Accordingly, KCM is credited with a total of five points and MVHF is credited with a total of three points. KCM is the tentative selectee in Group 522.

61. **Group 529B.** This group consists of three applications proposing service to two communities in Pennsylvania.<sup>64</sup> Beaver Springs Faith Baptist Church, Inc. ("BSFBC") and WITF, Inc. ("WITF") propose to serve Selinsgrove. Family Life Ministries, Inc. ("FLM") proposes to serve Kratzerville. None of the applicants claims a preference based on fair distribution and, accordingly, all will proceed to a point hearing analysis.

62. BSFBC claims three points as an established local applicant. WITF and FLM certify that they are not entitled to any points under this criterion. BSFBC claims two points for diversity of ownership based on a pledge to divest LPFM station WFBM-LP, Beaver Springs, Pennsylvania. WITF and FLM do not claim any points under this criterion. No applicant claims any points as a statewide network. With respect to technical parameters, BSFBC's proposed 60 dBu contour would encompass 606 square kilometers with a population of 48,551. FLM's proposed 60 dBu contour would encompass 766 square kilometers with a population of 56,099. WITF's proposed 60 dBu contour would encompass 450 square kilometers with a population of 42,421. FLM qualifies for one point as the best technical proposal because it proposes to serve at least ten percent more area and population than the next best proposal of BSFBC. Accordingly, BSFBC is credited with a total of five points, FLM with a total of one point, and WITF is not credited with any points. Thus, BSFBC is the tentative selectee in Group 529B.

63. **Group 537B.** The applications in Groups 537A and 537B were originally part of a single group of 19 applications and were analyzed together as a single mutually exclusive group.<sup>65</sup> The Bureau staff, however, subsequently determined that Group 537 could be bifurcated into two sub-groups and evaluated independently. The Bureau selected one applicant from Group 537A on fair distribution principles, and dismissed the other applicants in that subgroup. With respect to Group 537B, however, the staff determined that the subgroup could not be fully resolved through fair distribution principles and, therefore, referred Group 537B to the Commission for a point system analysis.<sup>66</sup>

64. Group 537B is comprised of 16 applications proposing to serve eight different communities in Texas and New Mexico. Iglesia Shekira ("Shekira"), Hispanic Outreach Ministry, Inc. ("HOM"), and Hobbs Seventh-Day Adventist Church ("HSDA") each proposes to serve Hobbs, New

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<sup>64</sup> Group 529 originally consisted of 34 applications. Partial settlement resulted in grant of some of those applications and dismissal of others. The settlement also had the side effect of bi-furcating the group, so that the remaining, non-settling applications comprise two distinct subgroups. We analyze Group 529B herein. Group 529A will be addressed separately.

<sup>65</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 October 2007 Window*, Memorandum Opinion and Order, 24 FCC Rcd 12390 (MB 2009).

<sup>66</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 October 2007 Window*, Memorandum Opinion and Order, 24 FCC Rcd 13615 (MB 2009).



Mexico. Six applicants propose to serve Plainview, Texas: Top O Texas Educational Broadcasting Foundation (“TOTEB”), The Johnson Foundation (“Johnson”), Maranatha Church of Laredo Incorporated (“Maranatha”), Oasis of Faith, Inc. (“Oasis”), Educational Music Foundation (“EMusic”), and Grace Community Church of Amarillo (“Grace”). Templo Piedra Angular (“Tempo”) and HOM each propose to serve Stanton, Texas. The remaining applicants, all proposing service to communities in Texas, are: Iglesia Jesucristo es mi Refugio, Inc. (“IJR”) for Crosbyton; Johnson for Aiken; Christian Ministries of the Valley, Inc. (“CMV”) for Brownfield; Promesa for Seminole; and Grace for Denver City.

65. Four applicants claim that they are eligible for a fair distribution preference.<sup>67</sup> Shekira, HOM, IJR, TOTEB, Johnson, Maranatha, Oasis, Templo, EMusic, and Grace-Plainview each certifies that its respective application is not entitled to a fair distribution preference. Accordingly, each of these applications is eliminated. Of the remaining applications, three claim a preference based on a first NCE service. HSDA does not and, therefore, is eliminated. CMV claims that it would provide a new first NCE service to 6,685 people; Promesa to 11,728 people; and Grace-Denver City to 7,378 people. These three applications are comparable with respect to first NCE service. Accordingly, we consider combined first and second NCE service population totals. CMV would provide a first or second NCE service to 20,988 people (6,685 first service plus 14,303 second service); Promesa to 18,101 people (11,728 first service plus 6,373 second service); and Grace-Denver City to 7,378 people (7,378 first service plus 0 second service). Grace-Denver City is eliminated because the next best proposal of Promesa would serve at least 5,000 more people. The CMV and Promesa applications, however, are comparable, and therefore must proceed to a point hearing.

66. Neither applicant claims points as an established local applicant. Each claims two points for diversity of ownership, and neither claims points as a statewide network. CMV’s proposed 60 dBu contour would encompass 7,632 square kilometers with a population of 39,256 people. Promesa’s proposed 60 dBu contour would encompass 4,184 square kilometers with a population of 18,189 people. CMV qualifies for two points under the best technical proposal because its proposal would serve at least 25 percent more area and population than Promesa’s proposal. Accordingly, CMV is credited with a total of four points, and Promesa receives two points. CMV is the tentative selectee in Group 537B.

67. **Group 538.** This group consists of 27 applications proposing service to 20 different communities in Texas. Three applicants would serve Eagle Lake: Les Seraphim (“Seraphim”), Primera Iglesia Evangelica de Apostoles y Profetas (“PIEAP”), and Christian Ministries of the Valley, Inc. (“CMV”). Three applicants propose service to Gonzales: Deliver the Word Ministries (“DWM”), Iglesia Jesucristo es Mi Refugio de San Antonio, Inc. (“IJRSA”), and New Streams Ministry, Inc. (“NSM”). NSM also has an application in this group proposing service to Seadrift. Two applicants propose to serve each of the following communities: for Columbus, Grace Public Radio (“Grace”) and KSBJ Educational Foundation (“KSBJ”); for Cuero, Iglesia Jesucristo es Mi Refugio, Inc. (“IJR”) and Gospel American Network (“GAN”); and for Fulton, Texas Pelican Media (“TPM”) and Oasis of Faith, Inc. (“Oasis”). TPM and Oasis have one additional application each in this group respectively proposing service to Refugio and Kenedy. Houston Christian Broadcasters, Inc. (“HCB”) has two applications in the group, one for Leesville and the other for Giddings. The other applicants are: Austin Airwaves, Inc. (“AAI”) for Ellinger; The University of Texas at Austin (“UT Austin”) for Flatonia; Michael Atherton Ministries, Inc. d/b/a Christ is Life Church (“Atherton”) for East Bernard; The Bridge Church, Inc. (“Bridge”) for Victoria; Clearview Culture Association (“Clearview”) for Yoakum; Vision Celestial (“VC”) for

<sup>67</sup> See HSDA, CMV, Promesa, and Grace-Denver City Applications, Questions III(1), III(2), and associated exhibits. HSDA claims that it would provide aggregated first and second NCE service to 7,111 of the 36,926 people encompassed within its 60 dBu contour; CMV to 20,988 of the 39,256 people; Promesa to 18,101 of the 18,189 people; and Grace-Denver City to 7,378 of the 21,823 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.

Freeport; New Wine Church of San Antonio (“New Wine”) for Yorktown; Misioneros Cristianos en Accion (“MCA”) for New Ulm; KMZD Radio, Inc. (“KMZD”) for Nixon; and Shredding the Darkness (“STD”) for Weimar.

68. In 13 of the 27 applications, the applicant certifies that it is eligible for a fair distribution preference and provides an exhibit.<sup>68</sup> IJR, GAN, PIEAP, Oasis-Fulton, IJRSA, New Wine, MCA, NSM (both Gonzales and Fulton), and TPM-Fulton, certify that they are each not eligible for a fair distribution preference and, accordingly, are each eliminated.<sup>69</sup> Also eliminated are four applicants that claim a fair distribution preference but provide no support for their claims – Grace, Bridge, Clearview, and KMZD. VC also is eliminated because, although it supports its claim with a map, it does not identify the number of people who would receive a first or second NCE service. Thus, VC does not demonstrate that it would provide new NCE service to enough people to be eligible for a fair distribution preference. Of the remaining applicants, ten claim a first service preference. Oasis-Kenedy does not and is, therefore, eliminated. The proposed first service population claims of the remaining applicants, in ascending order, are: TPM-Refugio, 2,777; HCB-Giddings, 2,820; HCB-Leesville, 3,427; DWM, 4,074; UT Austin, 6,724; Seraphim, 10,692; CMV, 11,856; STD, 13,439; KSBJ, 14,820; Atherton, 17,683; and AAI, 30,541. Although it is correct that AAI would provide a first NCE service to the largest population in this group, the size of that population is overstated, and AAI’s first service claim is, therefore, not decisive. Approximately 9,500 of the people which AAI claims would receive a first NCE service would actually be receiving a second NCE service, because AAI failed to consider a construction permit for KUBJ(FM) and a license for KYCM(FM). Correcting for this error, AAI’s first service would be within 5,000 people of Atherton’s next best proposal. Indeed, all of the first service claims are comparable because there is no 5,000-person differential between any claim and that of the next best proposal. With respect to aggregated first and second NCE service, the population claims of the applicants, in ascending order, are: TPM-Refugio, 2,777; HCB-Giddings, 2,820; HCB-Leesville, 6,558; STD, 13,439; Seraphim, 16,643; CMV, 17,975; KSBJ, 22,579; DWM, 28,725; UT Austin, 31,362; AAI, 38,428; and Atherton, 39,384. All applicants except AAI and Atherton are eliminated due to the 5,000-person difference between AAI’s proposal and the next best claim of UT Austin. Accordingly, the AAI and Atherton applications will proceed to a point system analysis.

69. Atherton claims three points as an established local applicant. AAI does not. Each asserts that it is entitled to two points for diversity of ownership. Neither claims points as a statewide network. With respect to technical parameters, Atherton’s proposed 60 dBu contour would encompass 5,513 square kilometers with a population of 57,876. AAI’s proposed 60 dBu contour would encompass 3,325 square kilometers with a population of 38,428. Atherton qualifies for two points under the best

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<sup>68</sup> See VC, Oasis-Kenedy, TPM-Refugio, HCB-Giddings, HCB-Leesville, DWM, UT Austin, Seraphim, CMV, KSBJ, Atherton, STD, and AAI Applications, Questions III(1), III(2), and associated exhibits. As discussed further in the text, VC’s exhibit does not state how many people within its 60 dBu contour would receive a new first service. Oasis-Kenedy would provide an aggregated first and second service to 10,331 of the 30,476 people encompassed within its proposed 60 dBu contour; TPM-Refugio to 2,777 of the 3,070 people; HCB-Giddings to 2,820 of the 11,200 people; HCB-Leesville to 6,558 of the 6,952 people; DWM to 28,725 of the 31,312 people; UT-Austin to 31,362 of the 39,941 people; Seraphim to 16,643 of the 63,357 people; CMV to 17,975 of the 21,836 people; KSBJ to 22,579 of the 25,262 people; Atherton to 39,384 of the 57,876 people; STD to 13,439 of the 38,570 people; and AAI to all 38,428 of the 38,428 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>69</sup> We observe that there are pending allegations in another proceeding that IJR, IJRSA, and another applicant may have attributable interests in one another and, thus, may have exceeded the ten-application-per-applicant cap which was in effect during the window. Because the IJR and IJRSA applications in Group 538 neither prevail nor potentially alter the analysis with respect to any other applicant, we need not reach this issue in our analysis of Group 538.

technical proposal criterion because it would serve at least 25 percent more area and population than AAI. Accordingly, Atherton is credited with a total of seven points, and AAI is credited with a total of two points. Atherton is the tentative selectee in Group 538.

70. **Group 9901XP.** This group of four applications for communities in Florida was considered in the *NCE Omnibus Order* in 2007.<sup>70</sup> The applicants and their point totals, based on certifications by the applicants, were: Merritt Island Public Radio, Inc. (“MIPR”), five points; Black Media Works, Inc. (“BMW”), three points; Central Florida Educational Foundation, Inc. (“Central”), two points; and CSN International (“CSN”) two points. MIPR was named tentative selectee. In a petition to deny, Central challenged MIPR’s receipt of three points as an established local applicant. In response to the petition, the staff determined that MIPR, an organization formed by long-term local residents, had not itself been in existence for at least two years prior to the snap-shot date used to determine qualifications, and therefore did not qualify for points as an established local applicant.<sup>71</sup> Because that determination had the potential to change the outcome of the proceeding, the staff referred this group to the Commission for a new point hearing.

71. BMW and MIPR each claim three points as an established local applicant. As discussed previously, MIPR’s claim is mistaken because MIPR was not in existence for at least two years prior to the snap shot date. CSN and Central each certify that it is not entitled to any points under this criterion. CSN, Central, and MIPR claim two points each for diversity of ownership. BMW certifies that it is not entitled to points under this criterion. No applicant claims points as a statewide network. With respect to technical parameters, CSN’s proposed 60 dBu contour would encompass approximately 27 square kilometers with a population of 40,763.<sup>72</sup> BMW’s proposed 60 dBu contour would encompass 27 square kilometers with a population of 39,449. Central’s proposed 60 dBu contour would encompass 30 square kilometers with a population of 48,701. MIPR’s proposed 60 dBu contour would encompass 51 square kilometers with a population of 42,606. No applicant qualifies for any points under this criterion because none proposes to serve both the largest area and population. Accordingly, MIPR, CSN and Central are credited with a total of 2 points each. BMW is credited with a total of 3 points. Thus, BMW is the tentative selectee in Group 9901XP.<sup>73</sup>

#### IV. NEXT STEPS

72. **Acceptability Studies and Filing of Petitions.** The staff has examined the applications of each tentative selectee for application defects.<sup>74</sup> Each tentative selectee identified in this Order and its

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<sup>70</sup> *NCE Omnibus Order*, 22 FCC Rcd at 6122. No applicant claimed a fair distribution preference so the Commission proceeded directly to a point system analysis.

<sup>71</sup> See *Central Florida Educational Foundation*, Letter, 22 FCC Rcd 18332 (MB 2001), citing *Reexamination of Comparative Standards for Noncommercial Educational Applications*, 15 FCC Rcd 7386, 7410 (2000), *aff’d*, 16 FCC Rcd at 5093, *recon. denied* 17 FCC Rcd 13138.

<sup>72</sup> We have adjusted CSN’s claimed area coverage of 179 square kilometers because, as discussed in the *NCE Omnibus Order*, CSN’s claim appeared to erroneously include large areas of water surrounding Cocoa Beach. *NCE Omnibus Order*, 22 FCC Rcd at 6122. See also 47 C.F.R. § 73.313(d)(2).

<sup>73</sup> The Commission’s database lists a May 2, 2007 Petition to Deny by CFEF in the records of every applicant in Group 9901XP, including CFEF’s own application. The May 2, 2007 CFEF Petition is, however, directed only to the prior tentative selectee, MIPR. There is no petition pending against BMW. Applicants will now have the opportunity to file petitions against BMW’s application now that it has been named tentative selectee.

<sup>74</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  
(continued...)

Appendix appears to be fully qualified to become the licensee of the new or modified NCE FM stations it has proposed. We tentatively conclude that the grant of their applications would serve the public interest, convenience and necessity. Accordingly, the tentative selectees are accepted for filing. This triggers a 30-day period for the filing of petitions to deny.

73. 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>75</sup>

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

75. With the exception of issues that cannot be resolved on delegated authority pursuant to the Commission's rules, the staff shall act on the tentatively selected applications. We note that the staff has 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>76</sup> The staff need not refer such matters to the Commission or an 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 staff's decision whether to award 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>77</sup> In such cases, the staff would either designate the application for hearing on the substantial and material question of fact, or refer the mutually exclusive group to the Commission for resolution of the novel issue and/or the determination of a successor tentative selectee.

76. **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.

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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>75</sup> See *id.* § 1.106 (a) (1). See also *Patrick J. Vaughn, Esq.*, Letter, 22 FCC Rcd 11165 (MB 2007).

<sup>76</sup> See, e.g. *Central Florida Educational Foundation, Inc.*, Letter, 23 FCC Rcd 1695 (MB 2008) (permitting 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>77</sup> See generally *NCE Omnibus*, 22 FCC Rcd at 6162 n.230 (2007) (standards for staff evaluation of petitions).

**V. ORDERING CLAUSES**

77. 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>78</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.

78. **Group 7.** Accordingly, IT IS ORDERED, that the Petition to Deny by Archangel Communications IS GRANTED. IT IS FURTHER ORDERED that the tentative selection of TBTA Ministries IS RESCINDED. IT IS FURTHER ORDERED, that Archangel Communications is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Mount Vernon, Alabama, and its application is ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order 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 TBTA Ministries (File No. BNPED-20071015ABX) and TO GRANT the application of Archangel Communications (File No. BNPED-20071022BPM) 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.

79. **Group 25.** Accordingly, IT IS ORDERED, that the tentative selection of Pataphysical Broadcasting Foundation, Inc. IS RESCINDED. IT IS FURTHER ORDERED, that the informal objection filed by Eschaton Foundation IS GRANTED to the extent indicated herein. IT IS FURTHER ORDERED, that Eschalton Foundation and Calvary Chapel Santa Cruz are TENTATIVELY SELECTED to be awarded construction permits ON A TIMESHARING BASIS for respective new NCE FM stations in Santa Cruz, California and Scotts Valley, California. The two applications ARE ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order 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 TO DISMISS the application of Pataphysical Broadcasting Foundation, Inc. (File No. BNPED-20071017AAV), to provide the remaining applicants ninety (90) days in which to reach a timesharing agreement among themselves and, upon execution of an acceptable agreement within this time period, TO GRANT the applications of Eschalton Foundation (File No. BNPED-20071022AOS) and Calvary Chapel Santa Cruz (File No. BNPED-20071022AXV) 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 Eschalton Foundation and Calvary Chapel Santa Cruz are unable to reach a voluntary timesharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate timesharing arrangement.

80. **Group 44.** Accordingly, IT IS ORDERED, that the tentative selection of the application of San Miguel Educational Fund (File No. BNPED-20071018AQX) IS RESCINDED. IT IS FURTHER ORDERED, that the March 8, 2010, Petition to Deny filed by Academy Media, Inc., IS GRANTED to the extent indicated herein. IT IS FURTHER ORDERED, that the Application filed by Academy Media, Inc. (File No. BNPED-20071018AWW) is TENTATIVELY SELECTED to be awarded a construction permit

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<sup>78</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, 1.120, 73.7004. In cases that involve separate mutually exclusive groups but present common issues, the petitions or appeals may be filed jointly or may be consolidated at the discretion of the Commission or a reviewing court. See, e.g., FED. R. APP. P. 3(b).



for a new NCE FM station at Ouray, Colorado and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order 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 San Miguel Educational Fund (File No. BNPED-20071018AQX) and TO GRANT the referenced application of Academy Media, Inc. (File No. BNPED-20071018AWW) 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.

81. **Group 169.** Accordingly, IT IS ORDERED, that Emmaus Christian Healing Ministries is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Barrington, New Hampshire and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order 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 Southwest Radio Church of the Air, Inc. (File No. BNPED-20071012AEY), Granite State Educational Fellowship (File No. BNPED-20071019AYP), and Northeast Gospel Broadcasting, Inc. (File No. BNPED-20071012ABA), and TO GRANT the application of Emmaus Christian Healing Ministries (File No. BNPED-20071022APT) CONDITIONED UPON 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 which also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed until the facility has achieved four years of on-air operations.

82. **Group 175.** Accordingly, IT IS ORDERED, that Eastern New Mexico University is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Eagle Tail, New Mexico and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order 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 Albuquerque, Inc. (BNPED-20071016AHU), Mountain Ambulance Service (BNPED-20071012AWJ), and St. Paul Cultural Broadcasting, Inc. (BNPED-20071022AKV), and TO GRANT the application of Eastern New Mexico University (File No. BNPED-20071022BEC) 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 which also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed until the facility has achieved four years of on-air operations.

83. **Group 197.** Accordingly, IT IS ORDERED, that Living Bread Radio, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Boardman, Ohio and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order 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 Pensacola Christian College, Inc. (BNPED-20071019DGH) and Bridgebuilders International Leadership (BNPED-20071018AAC) and TO GRANT the application of Living Bread Radio, Inc. (File No. BNPED-20071018APE) 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.



84. **Group 207.** Accordingly, IT IS ORDERED, that Tillicum Foundation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Cannon Beach, Oregon and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order 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 and KBPS Public Radio Foundation (BNPED-20071017AGY) and TO GRANT the application of Tillicum Foundation (File No. BNPED-20071019AFA) 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 PROVIDED THAT, Tillicum Foundation must surrender its license for FM translator station K205EU, Wheeler, Oregon, prior to commencement of program tests of the full service NCE FM station.

85. **Group 217.** Accordingly, IT IS ORDERED, that Muncy Hills Broadcasting, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Loganville, Pennsylvania and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order 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 Cedar Ridge Children's Home and School, Inc. (BNPED-20071019AAA) and TO GRANT the application of Muncy Hills Broadcasting, Inc. (File No. BNPED-20071019AXX) 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.

86. **Group 246.** Accordingly, IT IS ORDERED, that Millenium Broadcasting Corp. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Clarksville, Texas and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order 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 Media Foundation (File No. BNPED-20071022BGA) and TO GRANT the application of Millenium Broadcasting Corp. (File No. BNPED-20071022AAM) 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.

87. **Group 314C.** Accordingly, IT IS ORDERED, that Ink People, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Pine Hills, California, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days thereafter 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 One Ministries, Inc. (File No. BNPED-20071018AJT), and TO GRANT the application of Ink People, Inc. (File No. BNPED-20071022AOX), 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.

88. **Group 382.** Accordingly, IT IS ORDERED, that University of Wyoming is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Torrington, Wyoming and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order 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 Mission Nebraska, Inc. (File No. BNPED-20071012AFW), Bethesda Christian Broadcasting (File No. BNPED-20071019BBP), Iglesia Bethel de Las Asambleas de Dios de Mexico ((File No. BNPED-20071022BTQ) and (File No. BNPED-20071019AHS)), RV Ministries (File No. BNPED-20071017AHP), Bible Broadcasting Network, Inc. (File No. BNPED-20071019APZ), Pearl Communications Group (File No. BNPED-20071022BKJ), American Family Association (File No. BNPED-20071012DYK), Kansas Catholic Education Radio Corp. (File No. BNPED-20071016AIF), Oregon Trail Arts & Humanities League, Inc. (File No. BNPED-20071012AUP), and Better Life Ministries (File No. BNPED-20071022AFK), and TO GRANT the application of University of Wyoming (File No. BNPED-20071017ADT) CONDITIONED UPON 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 which also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed until the facility has achieved four years of on-air operations.

89. **Group 506.** IT IS FURTHER ORDERED, that Arizona Western College is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Quartzsite, Arizona and its application is ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order 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 Evangelico Broadcasting Ministry (File No. BNPED-20071019ABA), Andres Serranos Ministries, Inc. (File No. BNPED-20071015ADC), The Youth Foundation & Center of Imperial Valley, Inc. (File No. BNPED-20071015AKH), The Association for Community Education, Inc. (File No. BNPED-20071017AHI), Reachout Ministries (File No. BNPED-20071017AKS), Centro Cristiano Vida Abundante (File No. BNPED-20071018ABN), Living Proof, Inc. (File No. BNPED-20071018AJG), Centro Palebra de Fe Church (File No. BNPED-20071018AUY), De la Cruz International Ministries, Inc. (File Nos. BNPED-20071018BCV and 20071018BDB), California State University, Long Beach Foundation (File No. BNPED-20071019ACJ), San Bernardino Community College District (File No. BNPED-20071019AWU), Centro Cristiano Cosecha Final (File No. BNPED-20071022ABV), and Treehouse One, Inc. (File No. BNPED-20071022BSW), and TO GRANT the application of Arizona Western College (File No. BNPED-20071018ACD) CONDITIONED UPON 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 which also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed until the facility has achieved four years of on-air operations.

90. **Group 516.** Accordingly, IT IS ORDERED, that the Application For Review filed by Emerson College IS DENIED. IT IS FURTHER ORDERED, that Home Improvement Ministries, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Brewster, Massachusetts, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order for the filing of petitions to deny. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Connecticut River Educational Radio, Inc. (File Nos. BNPED-20071022BHL and BNPED-20071022ANZ), Nantucket Public Radio, Inc. (File Nos. BNPED-20071019AMJ and BNPED-20071022AEX), WGBH Educational Foundation, (File No. BNPED-20071019ARD), Executive Committee of Trustees Boston University (File Nos. BNPED-20071019APY and BNPED-20071019AQD), Home Improvement Ministries for Barnstable (File No. BNPED-20071012AAH), Athens Christian Radio, Inc. (File No. BNPED-20071015ACC), Cape Christian Broadcasting, Inc. (File No. BNPED-20071022BES), Horizon Christian Fellowship (File Nos. BNPED-20071019AIV and BNPED-20071019AKG), Cape Cod Community Television (File No. BNPED-20071019ATO), Centro de Intercession y Adoracion Internacional, Inc. (File No. BNPED-20071022AIT), Ocean Side

Broadcasting, Inc. (File No. BNPED-20071022AKZ), and Foothills Public Radio, Inc. (File No. BNPED-20071022BUW), and TO GRANT the application of Home Improvement Ministries, Inc. for Brewster (File No. BNPED-20071012ACV) 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 which also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed until the facility has achieved four years of on-air operations.

91. **Group 522.** Accordingly, IT IS ORDERED, that The Kingdom Christian Missionaries is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Dublin, New Hampshire, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order for the filing of petitions to deny. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Athol Orange Community Television (File No. BNPED-20071017AFE), The Executive Committee of Trustees of Boston University (File No. BNPED-20071019ASQ), Franklin County Christian Ministries (File Nos. BNPED-20071019BBR and BNPED-20071019ASF), Christian Mix Radio, Inc. (File No. BNPED-20071012ADP), Southwest Radio Church of the Air (File No. BNPED-20071012AEW), Vinikoor Family Foundation, Inc. (File No. BNPED-20071018AJX), New Hampshire Public Radio, Inc. (File No. BNPED-20071019ALX), WAMC (File No. BNPED-20071019AXR), Granite State Educational Fellowship (File No. BNPED-20071022AES), Mary V. Harris Foundation (File No. BNPED-20071022BSZ), and Cornerstone Community Radio, Inc. (File No. BNPED-20071017AAF), and TO GRANT the application of The Kingdom Christian Missionaries (File No. BNPED-20071016AEZ) 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 which 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 period of four years of on-air operations, PROVIDED THAT, pursuant to a waiver of 47 C.F.R. § 73.860(a), The Kingdom Christian Missionaries must divest or surrender its license for LPFM station WFCB-LP, Dublin, New Hampshire prior to commencement of program tests of the full service NCE FM station.

92. **Group 529B.** Accordingly, IT IS ORDERED, that Beaver Springs Baptist Church, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Selinsgrove, Pennsylvania, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order 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 Family Life Ministries, Inc. (BNPED-20071022AJG) and WITF, Inc. (BNPED-20071022BCC) and TO GRANT the application of Beaver Springs Baptist Church, Inc. (File No. BNPED-20071017ABA) 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, PROVIDED THAT, pursuant to a waiver of 47 C.F.R. § 73.860(a), Beaver Springs Faith Baptist Church, Inc. must divest or surrender its license for LPFM station WFBM-LP, Beaver Springs, Pennsylvania prior to commencement of program tests of the full service NCE FM station.

93. **Group 537B.** IT IS FURTHER ORDERED, that Christian Ministries of the Valley, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Brownfield, Texas, and that its application is ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order 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 Iglesia Shekira (File No. BNPED-20071018AYU), Hispanic Outreach Ministry, Inc. (File Nos. BNPED-20071022ANQ and 20071022ANM), Hobbs Seventh-Day Adventist Church (File No. BNPED-20071022AYY), Iglesia Jesucristo es mi Refugio, Inc. (File No. BNPED-20071017AIH), Top O Texas Educational Broadcasting Foundation (File No. BNPED-20071017AIS), The Johnson Foundation (File Nos. BNPED-20071018AMX and 20071018ANI), Maranatha Church of Laredo Incorporated (File No. BNPED-20071018ATX), La Promesa Foundation (File No. BNPED-20071019ACK), Oasis of Faith, Inc. (File No. BNPED-20071019ACS), Templo Piedra Angular (File No. BNPED-20071022AMR), Educational Music Foundation (File No. BNPED-20071022BEZ), and Grace Community Church of Amarillo (File Nos. BNPED-20071022BQI and 20071022BQR), and TO GRANT the application of Christian Ministries of the Valley, Inc. (File No. BNPED-20071019ABQ) CONDITIONED UPON 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 which also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed until the facility has achieved four years of on-air operations.

94. **Group 538.** Accordingly, IT IS ORDERED, that Michael Atherton Ministries, Inc. d/b/a Christ is Life Church is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in East Bernard, Texas and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order 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 Les Seraphim (File No. BNPED-20071018AOQ), Primera Iglesia Evangelica de Apostoles y Profetas (File No. BNPED-20071018BAM), Christian Ministries of the Valley, Inc. (File No. BNPED-20071019ABG), Deliver the Word Ministries (File No. BNPED-20071012AGX), Iglesia Jesucristo es Mi Refugio de San Antonio, Inc. (File No. BNPED-20071022ABK), New Streams Ministry, Inc. (File No. BNPED-20071022ARH) and (File No. BNPED-20071022AWH), Grace Public Radio (File No. BNPED-20071012AKI), KSBJ Educational Foundation (File No. BNPED-20071019AYD), Iglesia Jesucristo es Mi Refugio, Inc. (File No. BNPED-20071022ABK), Gospel American Network (File No. BNPED-20071018AOX), Texas Pelican Media (File Nos. BNPED-20071022ASV and BNPED-20071022AVE), Oasis of Faith, Inc. (File Nos. BNPED-20071019ANY and BNPED-20071019AOB), Houston Christian Broadcasters, Inc. (File Nos. BNPED-20071022ASL and BNPED-20071018AJJ), Austin Airwaves, Inc. (File No. BNPED-20071015AID), The University of Texas at Austin (File No. BNPED-20071017AFH), The Bridge Church, Inc. (File No. BNPED-20071018BAQ), Clearview Culture Association (File No. BNPED-20071019ALQ), Vision Celestial (File No. BNPED-20071019ANL), New Wine Church of San Antonio (File No. BNPED-20071022ACM), Misioneros Cristianos en Accion (File No. BNPED-20071022ADJ), KMZD Radio, Inc. (File No. BNPED-20071022ASR), and Shredding the Darkness (File No. BNPED-20071022BCV), and TO GRANT the application of Michael Atherton Ministries, Inc. d/b/a Christ is Life Church (File No. BNPED-20071018AAB) CONDITIONED UPON 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 which also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed until the facility has achieved four years of on-air operations.

95. **Group 9901XP.** Accordingly, IT IS ORDERED, that Black Media Works, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Merritt Island, Florida, and that its application is ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order 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 CSN International (File No. BNPED-1999012MA), Merritt Island Public Radio, Inc. (File No. BNPED-19990730MD), and Central Florida Educational Foundation, Inc. (File No. BNPED-

19990730MB), and TO GRANT the application of Black Media Works, Inc. (File No. BPED-19990730MA) CONDITIONED UPON 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

## Noncommercial Educational 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” in the Appendix’s Section 307(b) column indicates that Section 307(b) principles are not applicable to that mutually exclusive application, typically because each of the applicants in the group proposed to serve the same community. We also use this “n/a” designation for defective submissions, which were eliminated from the group prior to our consideration of Section 307(b) factors. When applicants propose service to different communities, the Appendix identifies each applicant’s eligibility for Section 307(b) consideration with a “yes” or “no” entry.<sup>1</sup> 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 no applicant in a group claimed a preference based on first service alone, the Appendix does not report specific first service data. If an applicant provided numbers but did not claim and/or qualify for a preference, 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. Such data would be included in the aggregated first and second service numbers, if the applicants claimed a preference on that basis. If an applicant is eliminated on the basis of a Section 307(b) analysis, that outcome is noted as “Elim on 307b” 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. Population and area numbers are generally those claimed by the applicant. If the Commission adjusted these numbers, a note such as “FCC#s” is included in the notes column.

4. In the case of a tie, the Appendix lists any tiebreaker 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

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<sup>1</sup> The “no” designation is used when applicants propose to serve different communities, but each certifies that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area.



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to a tie-breaker because they were entitled to fewer points than the tied applicants are designated with the note “Elim Points.” If more than one applicant survives the first two tie-breakers, such applicants have the notation “timeshare” because they will be subject to mandatory time sharing, the tiebreaker of last resort.

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 identifies groups with prior history. Groups that have been analyzed previously include the designation “reanalysis.” Where the reanalysis is due to a petition or objection filed against a tentative selectee a note “p/o to tentselect” appears in the notes column of the applicant which filed the petition or objection. The notes explain what has changed in the reanalysis. For example, a note of “div adjust” reflects an adjustment of points for diversity of ownership and “l adjust” reflect an adjustment in localism points. “Reanalysis as 2 groups” means that applications previously analyzed as a single group were reanalyzed as two smaller groups. If applicants in the group originally analyzed were since dismissed, those applicants are identified along with the month and year in which they were dismissed. For example, “dismissed 3/09” means that an application was dismissed in March 2009.