

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

In the Matter of )
Comparative Consideration of 27 Groups of )
Mutually Exclusive Applications ) NCE FM 2021 Window, MX Group Numbers
for Permits to Construct New Noncommercial ) 28, 33, 35, 58, 59A, 60, 62, 65, 66, 68, 87, 91,
Educational FM Stations ) 93, 94, 108B, 114, 117, 118, 128, 134, 136B,
) 155, 158, 164, 194, 203, and 211
)

MEMORANDUM OPINION AND ORDER

Adopted: July 31, 2022

Released: August 2, 2022

By the Commission:

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I. BACKGROUND

1. The Commission has before it for comparative consideration 27 groups of mutually exclusive (MX) applications for new noncommercial educational (NCE) FM station construction permits.1 By this Memorandum Opinion and Order (Order), the Commission performs threshold fair distribution of service analyses and uses a point system to tentatively select an application for grant in each group. Petitions to deny the application of any of these tentative selectees must be filed within 30 days of the date of release of this Order.2

1 On November 29, 2021, the Media Bureau (Bureau) issued a public notice identifying 231 groups of mutually exclusive NCE FM applications. See Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations, MB Docket No. 20-343, Public Notice, DA 21-1476 (MB rel. Nov. 29, 2021) (NCE MX Public Notice). Each of the groups analyzed herein was included in the NCE MX Public Notice.

2 See 47 CFR § 73.7004(b).

2. We address in this Order applications that were filed in November 2021, during the most recent filing window for new NCE FM applications.<sup>3</sup> These applicants have had an opportunity to enter into settlement agreements among themselves to resolve mutual exclusivity,<sup>4</sup> and, in the absence of any such settlement, are now subject to a simplified, comparative process codified in Part 73, Subpart K, of the Commission's rules.<sup>5</sup>

## II. GENERAL NCE COMPARATIVE PROCEDURES

3. Given the finite nature of and high demand for spectrum, the Commission cannot grant a construction permit to every qualified NCE applicant. Due to the noncommercial nature of the NCE service, MX<sup>6</sup> applications for new station construction permits are not subject to auction, but are resolved by applying comparative procedures.<sup>7</sup> Specifically, the Commission's comparative analysis of MX NCE applications generally consists of three main components. First, when NCE FM applicants in an MX group propose service to different communities, the Commission performs a threshold fair distribution analysis under section 307(b) of the Communications Act of 1934, as amended (the Act).<sup>8</sup> Second, application conflicts that are not resolved under this "fair distribution" analysis are compared by the Commission under an NCE point system,<sup>9</sup> which is a simplified, "paper hearing" process.<sup>10</sup> Third, if necessary, the Commission makes a tie-breaker determination, based on applicant-provided data and certifications. Each of these steps is described in greater detail below.<sup>11</sup>

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

<sup>4</sup> See *NCE MX Public Notice* at 2-5. The NCE FM applicants had an opportunity to enter into and file settlement agreements and to submit technical amendments to resolve conflicts and expedite the grant of applications filed in the NCE FM window.

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

<sup>6</sup> Conflicting NCE applications, which cannot all be granted consistent with the Commission's technical rules, are considered mutually exclusive. An MX group consists of all applications which are MX to at least one other application in the group.

<sup>7</sup> See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000) (*2000 NCE Order*), clarified, Memorandum Opinion and Order, 16 FCC Rcd 5074 (2001) (*2001 NCE MO&O*), recon. denied, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002). See also *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, MB Docket No. 19-3, Report and Order, 34 FCC Rcd 12519 (2019) (*NCE LPFM Order*) (amending the comparative rules and procedures), *aff'd* Order on Reconsideration, FCC 20-121, 35 FCC Rcd 10180 (2020) (*NCE Order on Reconsideration*).

<sup>8</sup> 47 U.S.C. § 307(b) (Section 307(b)). Although the Media Bureau has delegated authority to perform the Section 307(b) analyses, we are performing the Section 307(b) analyses for these 27 groups in conjunction with our subsequent point system analyses in order to expedite consideration of these groups. See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101, n.16 (2007) (*NCE Omnibus*). See also 47 CFR §§ 0.61 and 0.283.

<sup>9</sup> See 47 CFR § 73.7003 (point system selection procedures).

<sup>10</sup> See note 7, *supra*.

<sup>11</sup> In advance of the November 2021, filing window, the Commission amended its rules and procedures for filing NCE FM applications and selecting and licensing competing NCE FM applications. See *NCE LPFM Order*, *supra* note 7. The changes were designed to improve the comparative selection procedures, reduce confusion among future applicants, expedite the initiation of new service to the public, and eliminate unnecessary applicant burdens. See also *Media Bureau Announces October 30, 2020, Effective Date of New NCE and LPFM Rules*, Public Notice, MB Docket No. 19-3, DA 20-1298 (Nov. 2, 2020).

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

4. Section 307(b) states that the Commission must “provide a fair, efficient, and equitable distribution” of broadcast service among the states and communities.<sup>12</sup> In accordance with this directive, the Commission considers the fair distribution of service as a first, or threshold, issue in its NCE FM comparative review process<sup>13</sup> in order to ascertain whether grant of any of the applications would best further the Section 307(b) objective.<sup>14</sup> The first step of the Section 307(b), or fair distribution, analysis, is to determine whether any of the applicants in the MX group is a federally recognized Native American Tribe or Alaska Native Village proposing to serve Tribal Lands<sup>15</sup> and claims the Tribal Priority.<sup>16</sup>

5. If there is no Tribal Applicant in the MX group,<sup>17</sup> the second step in the Section 307(b) analysis is to determine whether any applicant would provide a first or second reserved band channel NCE aural service to a substantial population (the First or Second NCE Service Preference) by comparing population coverage totals.<sup>18</sup> Specifically, during this step, an NCE FM applicant is eligible to receive a fair distribution preference (or Section 307(b) preference)<sup>19</sup> if it would provide a first or second reserved band channel NCE aural service to at least 10% of the population (in the aggregate), within the proposed station’s service area, provided that the population served is at least 2,000 people. If only one applicant in an MX group qualifies for the First or Second NCE Service Preference, its “fair distribution” (Section 307(b)) preference is dispositive,<sup>20</sup> and that applicant will be awarded the construction permit.

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<sup>12</sup> 47 U.S.C. § 307(b).

<sup>13</sup> See 47 CFR § 73.7002; *2000 NCE Order*, 15 FCC Rcd at 7396 (2000) (concluding that “fair distribution of stations to communities should remain a threshold issue”); *2001 NCE MO&O*, 16 FCC Rcd at 5077 (“when competing FM applications propose to serve different communities, a proposal would be considered best, as a threshold matter, if it would provide service to a significant unserved or underserved population”).

<sup>14</sup> See 47 U.S.C. § 307(b) (“In considering applications for licenses . . . when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”); 47 CFR § 73.7002(a). Applicants’ Form 2100, Schedule 340, Fair Distribution of Service certifications enable the Commission to consider whether service to one community over the other would best achieve the Commission’s directive to distribute radio service fairly among communities.

<sup>15</sup> See 47 CFR §§ 73.7000, 73.7002(b).

<sup>16</sup> An NCE FM applicant is eligible to receive a fair distribution preference, and ultimately be awarded the construction permit, if it identifies itself as a Tribal Applicant, proposes Tribal Coverage, and proposes the first reserved channel NCE service owned by any Tribal Applicant at a community of license located on Tribal Lands (the Tribal Priority). See 47 CFR § 73.7000 (defining a “Tribal Applicant” and “Tribal Coverage”); see also 47 CFR § 73.7002(b); *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, First Report and Order, 25 FCC Rcd 1583 (2010) (establishing the Section 307(b) Tribal Priority). *Threshold Fair Distribution Analysis of Mutually Exclusive Applications of the Southern California Tribal Chairman’s Association and the Foundation for Economic Justice d/b/a/ Center for Economic Justice for Permits to Construct New Noncommercial Educational FM Stations Filed in November 2021 Window*, FCC 22-28, Memorandum Opinion and Order, (rel. April 19, 2022).

<sup>17</sup> None of the MX groups addressed in this Order contain a Tribal Applicant. Accordingly, the first step of the Section 307(b) analysis, the Tribal Priority analysis, is inapplicable herein.

<sup>18</sup> See 47 CFR § 73.7002(b).

<sup>19</sup> The terms “fair distribution preference” and “Section 307(b) preference” are used interchangeably to refer to the preference given to an MX application that is deemed to substantially further the fair distribution of service goals enunciated in Section 307(b).

<sup>20</sup> As noted, in the case of an MX group with a Tribal Applicant, an applicant qualifying for a Tribal Priority, however, will prevail over any MX applicant claiming a First or Second NCE Service Preference.

6. If more than one applicant in the MX group claims a First or Second NCE Service Preference, the applicant proposing to provide the greatest number of people with the highest level of service will be awarded a construction permit, if it will provide such service to at least 10% of the people within the station's 60 dBu contour *and* to at least 5,000 more people than the next best applicant.<sup>21</sup> First service will be preferred over second service.<sup>22</sup> Accordingly, the Commission first examines the applicants' first service levels alone to determine whether one of the proposals is superior and should receive a decisive preference. If such applicants are equivalent with respect to first service, or no applicant qualifies for a first service preference, the Bureau considers combined first and second NCE aural service population totals. At each stage of the Section 307(b) analysis, any applicant that is comparatively disfavored in terms of Section 307(b) eligibility or service totals is eliminated. The process ends when the Bureau determines that one applicant is entitled to a Section 307(b) preference, or that either (1) none of the remaining applicants can be selected or eliminated based on a Section 307(b) preference, or (2) each remaining applicant proposes to serve the same community. Any remaining MX applicants proposing equivalent service overall, or proposing the same community, proceed to a point system analysis.<sup>23</sup>

7. Each applicant claiming a First or Second NCE Service preference must support its fair distribution claim with an exhibit identifying the population residing within the proposed station's 60 dBu service contour and the number of people that would receive a new first or second NCE aural service.<sup>24</sup> Further, any applicant which receives a decisive Section 307(b) preference is required to construct and operate technical facilities substantially as proposed, and cannot downgrade service to the area on which the preference was based for a period of four years of on-air operations.<sup>25</sup>

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

8. The Commission compares mutually exclusive groups of NCE FM applications, which cannot be decided pursuant to the Section 307(b) analysis, under the point system set forth in section 73.7003 of the rules.<sup>26</sup> The NCE point system awards a maximum of seven merit points, based on four distinct criteria, described below.<sup>27</sup> When MX NCE FM applications proceed to a point system analysis,

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<sup>21</sup> 47 CFR § 73.7002(b).

<sup>22</sup> *Id.*

<sup>23</sup> See 47 CFR § 73.7003 (point system selection procedures).

<sup>24</sup> See *id.* § 73.7002(b). Applicants were required to use the most recently available, *i.e.*, 2010 Census, population data. See *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window*, DA 21-885, at 5-7 and n.24 (MB rel. July 23, 2021) (*NCE Filing Procedures Public Notice*); FCC Form 2100, Schedule 340, Instructions for Fair Distribution of Service at 12-14. An applicant's fair distribution showing must be computed as of the time of filing (close of the filing window for applications filed prior to the window) and cannot be enhanced thereafter. See 47 CFR § 73.7003(e) and (f)(3); *NCE Filing Procedures Public Notice* at 11; *2001 NCE MO&O*, 16 FCC Rcd at 5082-83. However, an applicant that subsequently makes engineering changes that would diminish its fair distribution position must amend its application to reflect that diminished position. See 47 CFR §§ 1.65 and 73.7003(e).

<sup>25</sup> See 47 CFR § 73.7005(b); see also 47 CFR § 73.7002(c). During this period, such applicant may make minor modifications to its authorized facilities, provided that "(i) the modification does not downgrade service to the area on which the preference was based, or (ii) any potential loss of first and second NCE service is offset by at least equal first and, separately, combined first and second NCE service population gain(s), and the applicant would continue to qualify for a decisive Section 307(b) preference."). *Id.*

<sup>26</sup> See 47 CFR § 73.7003. Unlike the 307(b) analysis, the point system selection process cannot be performed by the Bureau on delegated authority. See *2000 NCE Order*, 15 FCC Rcd at 7420.

<sup>27</sup> See 47 CFR § 73.7003(b).

the Commission reviews the applicants' point submissions<sup>28</sup> to compare the MX applications and tentatively select the application with the highest point total from each MX group for grant.<sup>29</sup>

9. First, we award three points to applicants certifying that they have been local and established for at least two years. To qualify for the three points as an "established local applicant"<sup>30</sup> an applicant must certify that it has been local and established in the community to be served continuously for at least two years immediately prior to the application filing.<sup>31</sup> To be considered local, a non-governmental applicant must have a physical headquarters, campus, or 75% of its governing board members residing within 25 miles of the reference coordinates of the proposed community of license.<sup>32</sup> A governmental unit is considered local within its jurisdictional boundaries.<sup>33</sup>

10. If an applicant certifies that it is an "established local applicant" it must submit substantiating documentation with its application to illustrate how it qualifies as local and established.<sup>34</sup> Examples of acceptable documentation include corporate material from the secretary of state, lists of names, addresses, and length of residence of board members and copies of governing documents requiring a 75% local governing board, or course brochures indicating that classes have been offered at a local campus for the preceding two years.<sup>35</sup> Any applicant awarded localism points in this Order has provided support for its certification. Thus, the specific point system determinations for each MX group that follows only discuss an applicant's documentation if it is insufficient to justify awarding localism points.

11. Second, we award two points for local diversity of ownership if no party to the application holds an attributable interest in any other station within the principal community contours of the applicant's proposed station.<sup>36</sup> To qualify for the diversity of ownership points, an applicant must submit either a contour map showing no overlap with the proposed NCE FM station, a statement that the applicant holds no attributable interests in any nearby radio stations, or a certification that it holds no

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<sup>28</sup> Each NCE FM applicant was required to complete the "Point System Factors/Tie Breakers" Section of FCC Form 2100, Schedule 340, Noncommercial Educational Station for Reserved Channel Construction Permit Application (Schedule 340) in the Bureau's Licensing and Management System (LMS) by the November 9, 2021 filing deadline.

<sup>29</sup> The Commission has reaffirmed its longstanding one-grant policy. *See NCE Order on Reconsideration, supra* note 7. The one-grant policy provides that only one application should be granted out of each mutually exclusive group, while providing the remaining competing applicants the opportunity to file again in the next filing window. *Id.* The Commission will not authorize "secondary grants" in MX NCE FM groups after the initial resolution of the MX applications. A secondary grant process would allow non-winning applicants that are not mutually exclusive with the tentative selectee to proceed to a second round of analysis by the Commission. *Id.* *See also NCE LPFM Order*, 34 FCC Rcd at 12528, n.68 (reaffirming the established one-grant policy and declining to pursue a secondary application grant practice).

<sup>30</sup> *See* 47 CFR § 73.7000.

<sup>31</sup> *See id.* § 73.7003(b)(1).

<sup>32</sup> A local headquarters or residence must be a primary place of business or residence and not, for example, a post office box, lawyer's office, branch office, or vacation home, which are more easily feigned and/or present less of an opportunity for meaningful contact with the community. *See 2000 Order*, 15 FCC Rcd at 7410, para. 54.

<sup>33</sup> For example, a state government is considered local throughout the state; a City Board of Education is considered local through the city; a state university is considered local throughout the state.

<sup>34</sup> An applicant claiming points as an established local applicant must also pledge to maintain localism characteristics during the period from grant of the construction permit until the station has achieved at least four years of on-air operations. *See* 47 CFR § 73.7005(c); *see also NCE LPFM Order*, 34 FCC Rcd at 12523, para 8.

<sup>35</sup> *See NCE Filing Procedures Public Notice* at 8.

<sup>36</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% of the applicant's equity and/or debt are also attributable. *Id.*

attributable interests in any broadcast stations.<sup>37</sup> Any applicant awarded diversity of ownership points in this Order has satisfied this requirement. Thus, the specific point system determinations for each MX group that follows only discuss an applicant's documentation if it is insufficient to justify awarding diversity points.

12. We note that an NCE FM applicant with an overlapping attributable interest, however, can still qualify for diversity of ownership points if it commits to divest the broadcast interest or resign from the attributable positional interest.<sup>38</sup> The applicant must submit the divestiture pledge with the application by the close of the filing window. We do not require the applicant to divest or resign by the close of the filing window. Rather, if we award that applicant a construction permit based on points, the applicant must complete the actual divestiture or resignation by the time the new NCE FM station commences program test operations.<sup>39</sup>

13. Third, we award two points for certain state-wide networks providing programming to accredited schools. These points are available only to applicants that cannot claim a credit for local diversity of ownership.<sup>40</sup> The state-wide network credit is an alternative for applicants that use multiple stations to serve large numbers of schools and, therefore, do not qualify for the local diversity of ownership credit. Applicants claiming points as a state-wide network must submit supporting documentation as an application exhibit.<sup>41</sup>

14. 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 10% greater than those of the next best area and population proposals, or two points if both are 25% 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>42</sup> If the best technical proposal does not meet the 10% threshold, no applicant is awarded points under this criterion. In considering this criterion, we have accepted applicants' coverage and population claims.<sup>43</sup>

15. 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.

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<sup>37</sup> See *Attributable Interests, Other Authorizations, of Schedule 340*. An applicant claiming points for diversity of ownership must also pledge to comply with the restrictions on station modifications and acquisitions during the period from grant of the construction permit until the station has achieved at least four years of on-air operations. See 47 CFR § 73.7005(c); see also *NCE LPFM Order*, 34 FCC Rcd at 12524, para. 12.

<sup>38</sup> See *NCE LPFM Order*, 34 FCC Rcd at 12525, para. 13 (expanding the Commission's divestiture policy by recognizing full-service station divestiture pledges for comparative purposes and crediting all contingent divestiture pledges that are made and submitted by the close of the filing window).

<sup>39</sup> *Id.*

<sup>40</sup> See 47 C.F.R. § 73.7003(b)(3).

<sup>41</sup> See Form 2100, Schedule 340 Instructions at page 16 (detailing preferred documentation to support this point claim).

<sup>42</sup> *Id.* § 73.7003(b)(4). See *NCE Omnibus*, 22 FCC Rcd at 6121-22, paras. 50-51 (If there is one top applicant in terms of area and population, that applicant will receive one point even if there is no single next best applicant for both factors. The Commission will compare the top applicant's proposed area to the proposed area of the applicant with the next best area proposal and the top applicant's population to the proposed population of the applicant with the next best population proposal).

<sup>43</sup> Our procedures for this filing window required applicants to measure area in square kilometers and exclude significant areas of water, *e.g.*, oceans and lakes, and measure population using the 2010 Census Block Data available from the Census Bureau. See Form 2100, Schedule 340 Instructions at page 16.

**C. Tie-Breakers.**

16. In the event MX applicants are tied with the highest number of points, the tied applicants proceed to a tie-breaker round.<sup>44</sup> The first tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant.<sup>45</sup> The applicant with the fewest attributable authorizations prevails and becomes the tentative selectee. If the tie is not broken by this first factor, we apply a second tie-breaker: the number of pending radio station applications attributable to each applicant.<sup>46</sup> The tentative selectee will be the applicant with the fewest pending new and major change applications in the same service.

17. If a tie remains after the second tie-breaker, applicants are considered under a third and final tie-breaker criterion – prior NCE applications.<sup>47</sup> The tentative selectee will be the applicant that can demonstrate that: (1) it applied in a previous filing window, and had its application accepted for filing and processed, but subsequently dismissed in favor of an applicant possessing superior points or a tie-breaker showing; (2) it was in continuous existence as a legal entity at all times from the date of the previous NCE window filing until the present; and (3) it does not hold any NCE construction permit or license.<sup>48</sup> If this third factor fails to break the tie, we use time-sharing as the tie-breaker of last resort. Specifically, we designate the remaining tied applicants in the MX group as the tentative selectees and direct the tentative selectees to submit, within 90 days of the release of the Order identifying the tentative selectees, a voluntary time-sharing agreement.<sup>49</sup>

**D. Timely Documentation of Comparative Qualifications.**

18. The NCE FM application, Schedule 340, is certification-based, but requires applicants to document certain of their claims by submitting supporting information.<sup>50</sup> Applicants must submit timely-filed exhibits supporting their point claims. We will not give credit to certifications which require the applicant to submit documentation, but which are not supported with any such timely submitted documentation. For example, we reject claims in this Order where the applicant certifies that it qualifies for points as an established local applicant but fails to supply supporting information referred to in the certification. While there is some flexibility in the type of documentation an applicant may provide, an applicant that does not submit timely support cannot have made a valid certification and will not receive the claimed points.<sup>51</sup> Similarly, we will not consider documentation to support a claimed comparative

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<sup>44</sup> See 47 CFR § 73.7003(c).

<sup>45</sup> *Id.* § 73.7003(c)(1). Applicants are required to count all attributable full service commercial and NCE radio stations (licenses and construction permits) and any FM translator stations providing non-fill-in service. An applicant may exclude fill-in translators, any translator which the applicant seeks to replace with its applied for full-service NCE FM station, and any station, which it pledges to divest. See *2001 NCE MO&O*, 16 FCC Rcd at 5102-03, para. 85; see also Form 2100, Schedule 340 Instructions at page 17.

<sup>46</sup> See 47 CFR § 73.7003(c)(2). When reporting pending applications, applicants were required to include new and major change radio applications, including the subject application and all other applications filed in the window by the November 9, 2021 deadline. Applicants should not have included any requests to participate in an auction filed on FCC Form 175 and other applications such as voluntary assignment of license, license renewal, and minor change in existing facilities. See *NCE Filing Procedures Public Notice* at 10.

<sup>47</sup> See *NCE LPFM Order*, 34 FCC Rcd at 12527-28, para. 19; 47 CFR § 73.7003(c)(3).

<sup>48</sup> *Id.* Applicants were required to submit an attachment demonstrating their qualifications under this third tie-breaker criterion.

<sup>49</sup> See 47 CFR § 73.7003(c)(4). If the tentative selectees do not agree on a voluntary time sharing arrangement within 90 days, we will impose mandatory time sharing granting all tentative selectees “equal, concurrent, non-renewable” licenses. 47 CFR § 73.7003(c)(5).

<sup>50</sup> See *2000 NCE Report and Order*, 15 FCC Rcd at 7423, para. 89.

<sup>51</sup> See, e.g., *Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct* (continued....)

point if it was submitted in an amendment after the November 2021, filing deadline. In such cases, we adjust the points of such applicants downward.

19. Finally, the NCE FM applicant's qualifications for points are initially determined "as of the closing of the filing window" *i.e.*, the November 9, 2021, filing deadline.<sup>52</sup> For example, NCE organizations are considered "established" if they have operated as local entities since November 9, 2019, *i.e.*, for at least two years prior to the November 9, 2021, Application Deadline. These "snap shot" applicant characteristics establish an applicant's maximum points and its maximum position in the event of a tie-breaker. This common reference date ensures a level competitive field for applicants, with their qualifications all compared as of the same time.<sup>53</sup> In order to prevent gamesmanship, any changes made after the filing deadline may potentially diminish, but cannot enhance, an applicant's comparative position and point total. Therefore, we have taken into account any amendments that adversely affect an applicant's point total and comparative position. We have not considered any amendments, filed after the filing deadline, which improve an applicant's comparative position.<sup>54</sup>

### III. GROUP-BY-GROUP ANALYSES

20. This Section contains narrative descriptions of our analyses, organized sequentially by group number. Unless otherwise noted, each component of the analysis is based on information provided by each of the respective applicants.<sup>55</sup> We have provided readers with an Appendix that condenses the group-by-group narratives that follow into chart form for quick reference.

21. At the outset, we again note that each group of applicants has had an opportunity to resolve mutual exclusivities by settlement and technical amendment. In addition, we emphasize that applicants were required to report their qualifications as of the date of closing of the filing window.<sup>56</sup> Any changes made thereafter may potentially have diminished, but could not enhance, an applicant's comparative position.

22. **Group 28.** This group consists of two applications to serve different communities in California. Free Radio Santa Nella (FRSN) proposes to serve Santa Nella, and Ondas de Vida, Inc. (OVI) proposes to serve Volta. Each applicant claims that it is eligible for a fair distribution preference based on first NCE service population totals.<sup>57</sup> FRSN would provide a first NCE service to 40,223 people. OVI

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*New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window, Memorandum Opinion and Order, 25 FCC Rcd 5013, 5017, para. 11 (2010)* ("applicant submitting no timely documentation at all cannot be found to have made a valid certification").

<sup>52</sup> See 47 CFR § 73.7003(e).

<sup>53</sup> See, e.g., *2001 NCE MO&O*, 16 FCC Rcd at 5082-83, paras. 23-26; see also *id.* at 5083, para. 26 ("Of overall concern to us in this area is that we are comparing applications that use the same data. Reliance on information as of the close of the window will ensure that applicants have essentially a common reference date. With a common reference date and a common method of calculating population, the staff will analyze applicants on a similar basis.").

<sup>54</sup> See 47 CFR § 73.7003(e). For example, an applicant may lose claimed points, such as the diversity of ownership points, as a result of acquiring an overlapping station after the November 2021, filing deadline. In contrast, if an applicant certifies that it does not qualify for one of the point factors, it cannot later amend its application to claim such points. This is the case even if the applicant actually would have qualified for the point it is seeking at the time it filed the application.

<sup>55</sup> See FCC Form 2100, Schedule 340, Noncommercial Educational Station for Reserved Channel Construction Permit Application, Fair Distribution of Service certifications and Point System Factors/Tiebreakers certifications.

<sup>56</sup> *NCE Filing Procedures Public Notice* at 10-11.

<sup>57</sup> See File Nos. 167151 and 167248, Fair Distribution of Service Section, and associated exhibits. FRSN's 60 dBu contour encompasses 40,223 people, and its claimed first NCE service is all 40,223 people. OVI's 60 dBu contour encompasses 41,384 people, and its claimed first NCE service is all 41,384 people. Thus, each applicant would

(continued....)

would provide a first NCE service to 41,384 people. The proposals of OVI and FRSN are comparable because neither proposal exceeds the other by at least 5,000 people.<sup>58</sup> OVI and FRSN, therefore, proceed to a point hearing.

23. Neither applicant claims that it qualifies for points as an established local applicant or state-wide network. Each applicant claims two points for diversity of ownership. With respect to technical parameters, FRSN's proposed 60 dBu contour would encompass 653 square kilometers with a population of 40,223. OVI's proposed 60 dBu contour would encompass 1,003 square kilometers with a population of 41,384. Neither applicant is eligible for any points under the best technical proposal criterion because neither proposes to serve at least 10 % more in both area and population than the other. Accordingly, FRSN and OVI are each credited with a total of two points and proceed to the tie-breaker analysis.

24. 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. FRSN certifies that it has no attributable interest in any radio authorization. OVI certifies that it has attributable interests in 11 radio authorizations. FRSN therefore prevails based on this first tie-breaker and is the tentative selectee in Group 28.

25. **Group 33.** This group consists of three applications proposing service to different communities in California. Vida Vale Vivir, Inc. (VVVI) proposes to serve Meridian; Adventist Compassion Care Inc. (ACCI) proposes to serve Richfield; and Stonewall Alliance of Chico (SAC) proposes to serve Willows. VVVI and SAC each claim eligibility for a fair distribution preference based on first NCE service population totals.<sup>59</sup> ACCI does not and is eliminated. VVVI and SAC claim to provide a first NCE service to 11,768 people and 12,306 people, respectively. The proposals are comparable because neither exceeds the other by at least 5,000 people. Accordingly, we consider combined first and second NCE service population totals. VVVI would provide a first or second NCE service to 21,133 people (11,768 first service plus 9,365 second service); SAC to 21,772 people (12,306 first service plus 9,466 second service). Because these proposals are also comparable, VVVI and SAC proceed to a point hearing.

26. SAC claims three points as an established local applicant. VVVI certifies that it is not entitled to any points under this criterion. SAC and VVVI claim two points each for diversity of ownership. Neither applicant claims points as a state-wide network. With respect to technical parameters, VVVI's proposed 60 dBu contour would encompass 3,796 square kilometers with a population of 31,271. SAC's proposed 60 dBu contour would encompass 4,791 square kilometers with a population of 33,049. Neither applicant qualifies for any points under the best technical proposal criterion because neither proposes to serve at least 10% more in both area and population than the other. Accordingly, VVVI is credited with two points, and SAC is credited with a total of five points. SAC is, therefore, the tentative selectee in Group 33.

27. **Group 35.** This group consists of four applications proposing service to different communities in California. Foothills Freqs (FF) proposes to serve Colfax. Weimar Institute (WI) proposes to serve Grass Valley. The Association for Community Education, Inc. (ACE) proposes to serve Nevada City, and Vida Vale Vivir, Inc. (VVVI) proposes to serve North San Juan. All four

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provide first NCE service to 100% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>58</sup> Neither applicant claims to provide a second NCE service. Accordingly, we do not consider and compare combined first and second NCE service population totals herein.

<sup>59</sup> See File Nos. 165591 and 167629, Fair Distribution of Service Section, and associated exhibits. VVVI's 60 dBu contour encompasses 31,271 people, and its claimed aggregated first and second NCE service is 21,133 people. SAC's 60 dBu contour encompasses 33,049 people, and its claimed aggregated first and second NCE service is 21,772 people. Thus, each applicant would provide combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

applicants claim eligibility for a fair distribution preference based on second NCE service.<sup>60</sup> ACE proposes a second NCE service to 63,820 people; FF to 102,067 people; WI to 102,229 people; and VVVI to 101,223. ACE is eliminated because the next best proposal of VVVI would serve at least 5,000 more people. The remaining three proposals are comparable. Accordingly, FF, WI, and VVVI proceed to a point hearing.

28. WI claims three points as an established local applicant. FF and VVVI each certifies that it is not entitled to any points under this criterion. Each applicant claims two points for diversity of ownership. No applicant claims points as a state-wide network. With respect to technical parameters, FF's proposed 60 dBu contour would encompass 1,986 square kilometers with a population of 111,667. WI's proposed 60 dBu contour would encompass 2,065 square kilometers with a population of 112,027. VVVI's proposed 60 dBu contour would encompass 1,919 square kilometers with a population of 109,105. None of the applicants qualify for any points as the best technical proposal because no applicant proposes to serve at least 10% more area and population than the other proposals. Accordingly, FF and VVVI are each credited with two points, and WI is credited with a total of five points. WI is, therefore, the tentative selectee in Group 35.

29. **Group 58.** This group consists of two applications to serve different communities in Georgia. The Association for Community Education, Inc. (ACE) proposes to serve Hawkinsville. Inverse Focus Ministry, Inc. (IFM) proposes to serve Rochelle. Each applicant claims that it is eligible for a fair distribution preference based solely on second NCE service population totals.<sup>61</sup> ACE and IFM claim to provide second NCE service to 16,942 people and 14,690 people, respectively. The proposals are comparable because neither exceeds the other by at least 5,000 people. ACE and IFM, therefore, proceed to a point hearing.

30. Neither applicant claims that it qualifies for points as an established local applicant or state-wide network. ACE and IFM each claim two points for diversity of ownership. With respect to technical parameters, ACE's proposed 60 dBu contour would encompass 2,327 square kilometers with a population of 37,434. IFM's proposed 60 dBu contour would encompass 2,369 square kilometers with a population of 37,108. Neither applicant is eligible for any points under the best technical proposal criterion because neither proposes to serve at least 10% more area and population than the other. Accordingly, ACE and IFM are each credited with a total of two points, and the applicants proceed to the tie-breaker analysis.

31. 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. ACE certifies that it has attributable interests in 15 radio authorizations. IFM certifies that it has no attributable radio interests. IFM therefore prevails based on this first tie-breaker and is the tentative selectee in Group 58.

32. **Group 59A.**<sup>62</sup> This group consists of seven applications to serve different communities

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<sup>60</sup> See File Nos. 167139, 167739, 167011, and 165592, Fair Distribution of Service Section, and associated exhibits. FF's 60 dBu contour encompasses 111,667 people, and its claimed second NCE service is 102,067 people. WI's 60 dBu contour encompasses 112,027 people, and its claimed second NCE service is 102,299 people. ACE's 60 dBu contour encompasses 63,953 people, and its claimed second NCE service is 63,820. VVVI's 60 dBu contour encompasses 109,105, and its claimed second NCE service is 101,223 people. Thus, each would provide second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>61</sup> See File Nos. 167012 and 167430, Fair Distribution of Service Section, and associated exhibits. ACE's 60 dBu contour encompasses 37,475 people, and its claimed second NCE service is 16,942 people. IFM's 60 dBu contour encompasses 37,108 people, and its claimed second NCE service is 14,690 people. Thus, ACE and IFM would each provide a second NCE service to at least 10% of the population within their respective 60 dBu contours and to more than 2,000 people.

<sup>62</sup> Group 59, which originally contained 17 applications, was bifurcated as a result of a technical amendment. The  
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in Florida. Big Bend Heritage Music Association, Inc. (BBH) has two applications in the group, one for Perry (BBH-Perry), and the other for Cross City (BBH-Cross City). The other applicants are: Elijah Radio (ER) and Learning Avenue, Inc. (LAI), each for Live Oak; Florida Educational Radio, Inc. (FER) for Lee; DND Ministries (DND) for Mayo; and Central Baptist Church of Ocala, Inc. (CBCO) for West Lake. ER, CBCO, and BBH-Cross City each claim eligibility for a first NCE service fair distribution preference.<sup>63</sup> FER, LAI, and BBH-Perry do not. Although DND certifies that it is eligible for a first NCE service fair distribution preference, it fails to provide sufficient documentation to support its claim.<sup>64</sup> Accordingly, DND, FER, LAI, and BBH-Perry are each eliminated. BBH-Cross City claims to provide new first NCE service to 2,131 people; ER to 6,656 people; and CBCO to 7,471 people. These three proposals are comparable because none exceeds the next best proposal by at least 5,000 people. Accordingly, we consider combined first and second NCE service population totals. BBH-Cross City would provide a first or second NCE service to 6,910 people (2,131 first service plus 4,779 second service); CBCO to 34,379 people (7,471 first service plus 26,908 second service); and ER to 34,656 people (6,656 first service plus 28,000 second service). BBH-Cross City is eliminated because ER's next best proposal would serve at least 5,000 more people. The ER and CBCO proposals are comparable, and therefore proceed to a point hearing.

33. Neither applicant claims points as an established local applicant or state-wide network. ER and CBCO each claim two points for diversity of ownership. With respect to technical parameters, ER's proposed 60 dBu contour would encompass 2,863 square kilometers with a population of 51,317. CBCO's proposed 60 dBu contour would encompass 2,665 square kilometers with a population of 41,746. Neither applicant qualifies for any points as the best technical proposal because neither proposes to serve at least 10% more in both area and population than the other. Accordingly, ER and CBCO are credited with a total of two points each, and proceed to the tie-breaker analysis.

34. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. ER certifies that it has an attributable interest in one radio authorization, and CBCO certifies that it has attributable interests in two radio authorizations. ER therefore prevails based on this first tie-breaker and is the tentative selectee in Group 59A.

35. **Group 60.** This group consists of two applications proposing service to different communities in Georgia. Community Public Radio, Inc. (CPRI) proposes to serve Cleveland, and Lumpkin Educational Broadcasting, Inc. (LEBI) proposes to serve Dahlonega. Neither applicant claims eligibility for a fair distribution preference.<sup>65</sup> Accordingly, the applicants proceed to a point hearing.

36. LEBI claims three points as an established local applicant, but did not submit

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other applications in the MX group were evaluated as Group 59B in a previous order. *See Threshold Fair Distribution Analysis of 13 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-477 (MB May 2, 2022) (*13 Group Order*).

<sup>63</sup> See File No. 167035, 166339, and 166684, Fair Distribution of Service Section, and associated exhibits. ER claims that it would provide aggregated first and second NCE service to 34,656 of the 51,317 people encompassed within its 60 dBu contour; CBCO to 34,379 of the 41,746 people; and BBH-Perry to 6,910 of the 12,472 people. Thus, each applicant would provide combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>64</sup> See File No. 167338, Fair Distribution of Service Section, and associated exhibits. DND's application does not enumerate the population that would receive first and/or second NCE service. Accordingly, we find DND's claim of 307(b) eligibility lacking the basic information that is needed to include and compare the proposal with the others in the group.

<sup>65</sup> See File Nos. 166735 and 166638, Fair Distribution of Service Section.

documentation to support its claim by the close of the filing window.<sup>66</sup> Accordingly, we will not award LEBI the three localism points.<sup>67</sup> CPRI certifies that it is not entitled to any points under this criterion. LEBI and CPRI claim two points each for diversity of ownership. CPRI, however, certifies that it has one existing authorization and did not timely support its diversity claim.<sup>68</sup> Accordingly, we will not award CPRI points under this criterion. Neither applicant claims points as a state-wide network. With respect to technical parameters, LEBI's proposed 60 dBu contour would encompass 767 square kilometers with a population of 42,947. CPRI's proposed 60 dBu contour would encompass 1,013 square kilometers with a population of 53,334. CPRI qualifies for one point as the best technical proposal because it proposes to serve at least 10% more area and population than the LEBI proposal. Accordingly, LEBI is credited with two points, and CPRI is credited with one point. LEBI is, therefore, the tentative selectee in Group 60.

37. **Group 62.**<sup>69</sup> This group consists of three applications to serve different communities in Georgia. Living Springs Retreat (LSR) proposes to serve Bowdon. B. Jordan Communications Corporation (BJCC) and Life Radio Ministries, Inc. (LRM) each propose to serve Franklin. Each applicant claims that it is eligible for a fair distribution preference based solely on aggregated first and second NCE service population totals.<sup>70</sup> LSR claims to provide combined first and second NCE service to 12,344 people; BJCC to 12,461 people; and LRM to 14,743 people. The proposals are comparable because no proposal exceeds the next best by at least 5,000 people. Accordingly, the applicants proceed to a point hearing.

38. LSR claims three points as an established local applicant. Neither BJCC nor LRM claim points under this criterion. Each applicant claims two points for diversity of ownership.<sup>71</sup> No applicant

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<sup>66</sup> We note, however, that even if we were to award LEBI the three points as an established local applicant, it would not change the outcome of this group.

<sup>67</sup> On February 14, 2022, three months after the close of the filing window, LEBI amended its application to support its claim as an established local applicant. Because this support was filed after the close of the filing window, we do not consider it. *See supra*, para. 19.

<sup>68</sup> On December 8, 2021, one month after the close of the filing window, CPRI amended its application to, *inter alia*, provide support for its diversity of ownership claim. Because this support was filed after the close of the filing window, we do not consider it. *See supra*, para. 19.

<sup>69</sup> Group 62 was initially included in the Bureau's March 24, 2022, *Fair Distribution Order*. *See Threshold Fair Distribution Analysis of 19 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-314, at paras. 15, 38 (MB Mar. 24, 2022) (*March 24 Fair Distribution Order*). Subsequent to the release of the *March 24 Fair Distribution Order*, the Bureau noted that its fair distribution analysis was inaccurate because it neglected to consider a recent amendment by one of the applicants, which reduced the applicant's first and second NCE service claims and thus negated its fair distribution preference. Accordingly, on April 1, 2022, the Bureau issued an Erratum to remove any consideration of the applications in Group 62 from the Order. *See Threshold Fair Distribution Analysis of 18 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Erratum, DA 22-314 (MB Apr. 1, 2022). The current analysis reflects the applicant's amendment.

<sup>70</sup> *See* File Nos. 167119, 166112 and 165527, Fair Distribution of Service Section, and associated exhibits. LSR's amended 60 dBu contour encompasses 28,373 people, and its claimed aggregated first and second NCE service is 12,512 people (168 first NCE service plus 12,344 people second NCE service). BJCC's 60 dBu contour encompasses 17,599 people, and its claimed aggregated first and second NCE service is 12,500 people (39 first service plus 12,461 second service). LRM's 60 dBu contour encompasses 21,756 people, and its claimed aggregated first and second NCE service is 14,743 people (0 first service and 14,743 second service). Thus, each applicant would provide combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>71</sup> LSR's diversity of ownership claim is based, in part, on the waiver of attribution of the broadcast interests of Stephen Dickman, one of the members of its board of directors. LSR, however, also submits a contour map, illustrating no overlap between the radio stations associated with Mr. Dickman and the proposed NCE station. Because the map is sufficient to satisfy LSR's diversity of ownership claim, we do not need to act on LSR's waiver

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claims points as a state-wide network. With respect to technical parameters, LSR's proposed 60 dBu contour would encompass 1,249 square kilometers with a population of 28,373. BJCC's proposed 60 dBu contour would encompass 1,089 square kilometers with a population of 17,599. LRM's proposed 60 dBu contour would encompass 1,289 square kilometers with a population of 21,756. No applicant qualifies for any points as the best technical proposal because no proposal would serve at least 10% more in both area and population than the others. Accordingly, LSR is credited with a total of five points; BJCC and LRM are each credited with two points. LSR is, therefore, the tentative selectee in Group 62.

39. **Group 65.** This group consists of two applications proposing service to different communities in Georgia. Restored Together Radio, Inc. (RTRI) proposes to serve Bowman, and Evangelical Megaphone Ministry, Inc. (EMMI) proposes to serve Elberton. Each applicant claims eligibility for a fair distribution preference based on combined first and second NCE service.<sup>72</sup> RTRI and EMMI propose to provide aggregated first and second NCE service to 11,135 people and 15,695 people, respectively. The proposals are comparable because neither exceeds the other by at least 5,000 people. RTRI and EMMI, therefore, proceed to a point hearing.

40. Neither applicant claims points as an established local applicant or state-wide network. Each applicant claims two points for diversity of ownership. With respect to technical parameters, RTRI's proposed 60 dBu contour would encompass 1,236 square kilometers with a population of 29,274. EMMI's proposed 60 dBu contour would encompass 727 square kilometers with a population of 17,435. RTRI receives two points for the best technical proposal because it proposes to serve at least 25% more area and population than EMMI. Thus, RTRI is credited with a total of four points, and EMMI is credited with two points. Accordingly, RTRI is the tentative selectee in Group 65.

41. **Group 66.** This group consists of two applications proposing service to different communities in Georgia. World Federation of Pastors and Ministers of the Full Gospel, Inc. (WFPFG) proposes to serve Hardwick. Elijah Radio (ER) proposes to serve Milledgeville. Each applicant claims eligibility for a fair distribution preference based on aggregated first and second NCE service.<sup>73</sup> WFPFG claims to provide combined first and second NCE service to 21,711 people (0 first service plus 21,711 second service); ER to 17,413 people (6,356 first service plus 11,057 second service). These proposals are comparable because neither exceeds the other by at least 5,000 people. Accordingly, WFPFG and ER proceed to a point hearing.

42. Neither applicant claims points as an established local applicant or state-wide network. Each applicant claims two points for diversity of ownership. With respect to technical parameters, WFPFG's proposed 60 dBu contour would encompass 1,550 square kilometers with a population of 55,204. ER's proposed 60 dBu contour would encompass 2,767 square kilometers with a population of 75,127. ER receives two points for the best technical proposal because it proposes to serve at least 25% more area and population than WFPFG. Thus, ER is credited with a total of four points, and WFPFG is credited with two points. Accordingly, ER is the tentative selectee in Group 66.

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request.

<sup>72</sup> See File Nos. 167583 and 166263, Fair Distribution of Service Section, and associated exhibits. RTRI's 60 dBu contour encompasses 29,274 people, and its claimed aggregated first and second NCE service is 11,135 people (989 first service plus 10,146 second service). EMMI's 60 dBu contour encompasses 26,580 people, and its claimed aggregated first and second NCE service is 15,695 people (1,426 first service plus 14,269 second service). Thus, each applicant would provide combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>73</sup> See File Nos. 167178 and 167058, Fair Distribution of Service Section, and associated exhibits. WFPFG's 60 dBu contour encompasses 55,204 people, and its claimed combined first and second NCE service is 21,711 people. ER's 60 dBu contour encompasses 75,127 people, and its claimed aggregated first and second NCE service is 17,413 people. Thus, each applicant would provide combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

43. **Group 68.** This group consists of four applications proposing service to different communities in Georgia. Community Public Radio, Inc. (CPRI) proposes to serve Adairsville. La Senda Antigua, Inc. (LSAI) proposes to serve Dalton. Hector Guevara Ministry Corp. (HGMC) proposes to serve Resaca, and Urban Community Life (UCL) proposes to serve Summerville. CPRI and UCL each claim eligibility for a fair distribution preference.<sup>74</sup> LSAI and HGMC do not claim such a preference and are each eliminated. Neither CPRI nor UCL claims to be eligible for a preference based solely on first NCE service. CPRI claims to provide combined first and second NCE service to 15,673 people (0 first service plus 15,673 second service); UCL to 20,476 people (1,736 first service plus 18,740 second service). Because neither proposal exceeds the other by at least 5,000 people, the proposals are comparable. Accordingly, CPRI and UCL proceed to a point hearing.

44. UCL claims three points as an established local applicant. CPRI certifies that it is not entitled to any points under this criterion. Each applicant claims two points for diversity of ownership. CPRI, however, certifies that it has one other existing authorization in Georgia, but did not provide support for its diversity claim.<sup>75</sup> We, therefore, do not award diversity points to CPRI. Neither applicant claims points as a state-wide network. With respect to technical parameters, CPRI's proposed 60 dBu contour would encompass 2,150 square kilometers with a population of 137,484. UCL's proposed 60 dBu contour would encompass 3,427 square kilometers with a population of 158,749. UCL qualifies for one point as the best technical proposal because it proposes to serve at least 10% more area and population than CPRI. Accordingly, CPRI is not credited with any points, and UCL is credited with a total of six points. UCL is, therefore, the tentative selectee in Group 68.

45. **Group 87.** This group consists of eight applications to serve different communities in Idaho. The Association for Community Education, Inc. (ACE) proposes to serve Blackfoot; Bible Broadcasting Network, Inc. (BBN) proposes to serve Chubbuck; Society of Saint Vincent de Paul Holy Spirit Conference (SSV) proposes to serve Rockford; and JKJ Educational Foundation (JEF) proposes to serve Atomic City. The four remaining applicants propose to serve Pocatello: Iglesia Case de Milagros (ICM), Radio by Grace, Inc. (RBG), Idaho Conference of Seventh-Day Adventists, Inc. (ICSA), and Idaho State Board of Education (ISBE). JEF and SSV claim eligibility for a fair distribution preference based on second NCE service population totals.<sup>76</sup> ACE, BBN, ICM, RBG, ICSA, and ISBE do not claim eligibility for a fair distribution preference, and accordingly, are each eliminated. JEF would provide second NCE service to 2,590 people; SSV to 2,925 people. The JEF and SSV proposals are comparable because neither proposal exceeds the other by at least 5,000 people. Accordingly, JEF and SSV proceed to a point hearing.

46. SSV claims it qualifies for three points as an established local applicant. JEF does not. Each applicant claims two points for diversity of ownership. Neither applicant claims points as a state-wide network. With respect to technical parameters, SSV's proposed 60 dBu contour would encompass 9,376 square kilometers with a population of 27,652. JEF's proposed 60 dBu contour would encompass 8,080 square kilometers with a population of 17,669. SSV qualifies for one point under the best technical

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<sup>74</sup> See File Nos. 166732 and 167714, Fair Distribution of Service Section, and associated exhibits. CPRI's 60 dBu contour encompasses 137,484 people, and its claimed aggregated first and second NCE service is 15,673 people. UCL's 60 dBu contour encompasses 158,749 people, and its claimed aggregated first and second NCE service is 20,476 people. Thus, each would provide combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>75</sup> CPRI states that it has an existing interest in WNEE(FM), Patterson, Georgia, but neglects to submit a contour map to illustrate whether there is overlap with the proposed new NCE FM station. We note, however, that even if we were to award CPRI the two points for diversity of ownership, it would not change the outcome of this group.

<sup>76</sup> See File Nos. 167814 and 167788, Fair Distribution of Service Section, and associated exhibits. JEF's 60 dBu contour encompasses 17,669 people, and its claimed second NCE service is 2,590 people. SSV's 60 dBu contour encompasses 27,652, and its claimed second service is 2,925 people. Thus, each applicant would provide second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

proposal criterion because its proposal would serve at least 10% more area and population than JEF's proposal. Accordingly, SSV is credited with a total of six points, and JEF is credited with a total of two points. SSV is the tentative selectee in Group 87.

47. **Group 91.** This group consists of two applications proposing service to different communities in Illinois. Relevant Radio, Inc. (RRI) proposes to serve Libertyville, and Poderosa Broadcasting, Inc. (PBI) proposes to serve North Chicago. RRI is the only applicant to claim eligibility for a fair distribution preference.<sup>77</sup> RRI, however, submitted insufficient documentation to determine how many people would receive a first and/or second NCE service, or whether its proposal satisfies the 10%/2,000 persons minimum threshold. Therefore, we cannot award RRI a fair distribution preference. RRI and PBI, therefore, proceed to a point hearing.

48. RRI certifies that it is not entitled to any points as an established local applicant. PBI claims three points under this criterion, but neglects to submit sufficient documentation to support its claim.<sup>78</sup> Accordingly, we will not award localism points to PBI. PBI claims two points for diversity of ownership; RRI does not. Neither applicant claims points as a state-wide network. With respect to technical parameters, RRI's proposed 60 dBu contour would encompass 64 square kilometers with a population of 300,718. PBI's proposed 60 dBu contour would encompass 117 square kilometers with a population of 103,828. Because RRI proposes to serve more population but PBI would serve more area, neither applicant can claim to serve at least 10% more in both area and population than other. Thus, neither receives any points for the best technical proposal. Accordingly, RRI is not credited with any points, and PBI is credited with two points. PBI is, therefore, the tentative selectee in Group 91.

49. **Group 93.** This group consists of four applications proposing service to different communities in Wisconsin. Optima Enrichment, Inc. (OEI) proposes to serve Delafield. Waterloo Christian Radio Corporation (WCRC) proposes to serve Ixonia. The Family Radio Network, Inc. (FRNI) proposes to serve Jackson, and Community Public Radio, Inc. (CPRI) proposes to serve Waukesha. OEI, WCRC, and CPRI each claim eligibility for a fair distribution preference based on second NCE service.<sup>79</sup> FRNI does not claim a fair distribution preference and is eliminated. CPRI claims it will provide second NCE service to 32,857 people; OEI to 37,827 people; and WCRC to 37,998 people. The CPRI, OEI, WCRC proposals are comparable because no proposal exceeds the next best proposal by at least 5,000 people. Accordingly, CPRI, OEI, and WCRC proceed to a point hearing.

50. OEI and WCRC each claim three points as an established local applicant. CPRI certifies that it is not entitled to any points under this criterion. Each applicant claims two points for diversity of ownership. WCRC's diversity claim is based on a commitment to divest LPFM station WULD-LP, Waterloo, Wisconsin, prior to commencement of the on-air operations of the proposed NCE station. No applicant claims points as a state-wide network. With respect to technical parameters, OEI's proposed 60 dBu contour would encompass 1,320 square kilometers with a population of 152,234. WCRC's proposed

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<sup>77</sup> See File No. 167879, Fair Distribution of Service Section, and associated exhibits. According to RRI's application, its proposed 60 dBu contour encompasses 300,718 people. RRI states in its engineering exhibit that significant populations will receive both first and second NCE service from the proposed facilities. To support this claim, however, RRI only provides a map without any service area population totals.

<sup>78</sup> See File No. 166958. PBI submits its "Certificate of Formation," showing that it was established on October 6, 2021, less than two years before the filing window. Accordingly, PBI does not appear to qualify as an established local applicant.

<sup>79</sup> See File Nos. 167847, 167128, and 166752, Fair Distribution of Service Section, and associated exhibits. OEI's 60 dBu contour encompasses 152,234 people, and its claimed second NCE service is 37,827 people. WCRC's 60 dBu contour encompasses 246,511 people, and its claimed second NCE service is 37,998 people. CPRI's 60 dBu contour encompasses 290,895 people, and its claimed second NCE service is 32,857 people. Thus, each would provide second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

60 dBu contour would encompass 1,759 square kilometers with a population of 246,511. CPRI's proposed 60 dBu contour would encompass 1,725 square kilometers with a population of 290,895. No applicant qualifies for any points as the best technical proposal because no proposal will serve at least 10% more in both area and population than the others. Accordingly, CPRI is credited with two points. OEI and WCRC are each credited with five points, and proceed to the tie-breaker analysis.

51. 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. OEI and WCRC each certifies that it has no attributable interest in any radio authorization. Therefore, we proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. The applicant with the fewest applications prevails. OEI certifies that it has no pending applications while WCRC certifies that it has one pending application. Applicants, however, were required to count the application at issue when reporting their pending applications. Therefore, “one” pending application is the lowest possible number of pending applications that can be specified correctly on the Schedule 340.<sup>80</sup> Accordingly, with this adjustment, OEI and WCRC remain tied and proceed to the third and final tie-breaker - prior NCE applications. The tentative selectee will be the applicant that can demonstrate that: (1) it applied in a previous filing window, and had its application accepted for filing and processed, but subsequently dismissed in favor of an applicant possessing superior points or a tie-breaker showing; (2) it was in continuous existence as a legal entity at all times from the date of the previous NCE window filing until the present; and (3) it does not hold any NCE construction permit or license. OEI certifies that it satisfies this final tie-breaker criterion,<sup>81</sup> WCRC does not. Accordingly, OEI is the tentative selectees in Group 93.

52. **Group 94.** This group consists of seven applications to serve different communities in Indiana. The Gospel Light Ministries, Inc. (GLM) proposes to serve Alexandria; The Moody Bible Institute of Chicago (MBIC) proposes to serve Eaton; Vanguard Association of Sunbelt Colleges Corporation (VASC) proposes to serve Middletown; Pensacola Christian College, Inc. (PCC), Side by Side, Inc. (SBS), and Olivet Nazarene University (ONU) each proposes to serve Muncie; and New Beginnings Movement Inc. (NBM) proposes to serve Yorktown. GLM, MBIC, VASC, PCC, ONU, and NBM each asserts that it is eligible for a fair distribution preference.<sup>82</sup> SBS does not and is eliminated. MBIC, VASC, and PCC assert that they are eligible for a first NCE service preference. GLM, ONU, and NBM do not and are each eliminated. MBIC claims to provide first NCE service to 29,267 people;

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<sup>80</sup> See *NCE Filing Procedures Public Notice*, *supra* note 24 (“When reporting pending applications, applicants must include new and major change radio applications, including the subject application and all other applications filed in this window by the Application Deadline.”).

<sup>81</sup> See File No. 167847. OEI sufficiently demonstrates that: (1) it applied for an NCE FM station in the October 2007, NCE FM filing window, but had its application dismissed in favor of an applicant with superior points (see File No. BNPED-20071022AFG; *Comparative Consideration of 24 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 12887, 12901, para. 38 (2010); (2) it has remained in continuous existence as a legal entity since the October 2007, NCE filing window; and (3) it does not hold any NCE construction permit or license.

<sup>82</sup> See File Nos. 167810, 167671, 167695, 167443, 166031, and 166872, Fair Distribution of Service Section, and associated exhibits. GLM's 60 dBu contour encompasses 12,349 people, and its claimed combined first and second NCE service is 11,571 people (0 first service and 11,571 second service). MBIC claims that it would provide first NCE service to 29,267 of the 171,462 people within its proposed 60 dBu contour; VASC to 28,226 of the 169,108 people; and PCC to 17,891 of the 120,768 people. ONU's 60 dBu contour encompasses 114,514 people, and its claimed combined first and second NCE service is 18,946 people (0 first service and 18,946 second service). Finally, NBM's 60 dBu contour encompasses 125,291 people, and its claimed combined first and second NCE service is 20,449 people (0 first service and 20,449 second service). Thus, each applicant would provide first NCE service, or a combined first and second NCE service, to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

VASC to 28,226 people; and PCC to 17,891 people. Because PCC would serve at least 5,000 fewer people than VASC's next best proposal, PCC is eliminated. MBIC and VASC are comparable with respect to first NCE service, and we therefore consider combined first and second NCE service population totals. MBIC would provide a first or second NCE service to 77,419 people (29,267 first service plus 45,152 second service); VASC to 73,768 people (28,226 first service plus 45,442 second service). Because the proposals are still comparable, MBIC and VASC proceed to a point hearing.

53. Neither applicant claims that it qualifies for points as an established local applicant or state-wide network. Each applicant claims two points for diversity of ownership. With respect to technical parameters, MBIC's proposed 60 dBu contour would encompass 2,503 square kilometers with a population of 171,462. VASC's proposed 60 dBu contour would encompass 2,563 square kilometers with a population of 169,108. Neither applicant is eligible for any points under the best technical proposal criterion because neither applicant proposes to serve at least 10% more area and population than the other. Accordingly, MBIC and VASC are each credited with a total of two points and proceed to a tie-breaker analysis.

54. 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. MBIC certifies that it has attributable interests in 62 radio authorizations. VASC certifies that it has no attributable radio interests. VASC therefore prevails based on this first tie-breaker and is the tentative selectee in Group 94.

55. **Group 108B.**<sup>83</sup> This group consists of three applications to serve different communities in Virginia. Holy Family Communications (HFC) and Positive Alternative Radio, Inc. (PAR) each propose to serve Strasburg. Massanutten Military Academy (MMA) proposes to serve Woodstock. HFC and PAR each assert eligibility for a fair distribution preference based on second NCE service population totals.<sup>84</sup> MMA does not claim eligibility for a fair distribution preference. Accordingly, MMA is eliminated. Because HFC and PAR each propose to serve the same community, the fair distribution analysis ends, and the applicants proceed to a point hearing.

56. Neither applicant claims points as an established local applicant or state-wide network. HFC claims two points for diversity of ownership; PAR does not. With respect to technical parameters, HFC's proposed 60 dBu contour would encompass 749 square kilometers with a population of 31,357. PAR's proposed 60 dBu contour would encompass 511 square kilometers with a population of 21,690. HFC qualifies for two points under the best technical proposal criterion because its proposal would serve at least 25% more area and population than PAR's proposal. Accordingly, HFC is credited with a total of four points, and PAR is not credited with any points. HFC is, therefore, the tentative selectee in Group 108B.

57. **Group 114.** This group consists of two applications to serve different communities in Michigan. Evangelistic Knights of Our Lady, Inc. (EKL) proposes to serve Escanaba, and Full Potential (FP) proposes to serve Wells. Each applicant claims that it is eligible for a fair distribution preference

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<sup>83</sup> Group 108 originally contained eight applications. The group was bifurcated as a result of dismissals and amendments of other applications that eliminated some of the contour overlaps among the applications. The other applications in the MX group were evaluated as Group 108A in a previous order. *See Threshold Fair Distribution Analysis of 15 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-238 (March 9, 2022).

<sup>84</sup> *See* File Nos. 167720 and 167366, Fair Distribution of Service Section, and associated exhibits. HFC's 60 dBu contour encompasses 31,357 people. HFC claims that it would provide a second NCE service to 10,305 people. PAR's 60 dBu contour encompasses 21,690 people. PAR claims that it would provide a second NCE service to 11,993 people. Thus, each applicant would provide second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

based solely on second NCE service population totals.<sup>85</sup> EKL would provide a second NCE service to 4,879 people; FP to 7,322 people. The EKL and FP proposals are comparable because neither proposal exceeds the other by at least 5,000 people. EKL and FP, therefore, proceed to a point hearing.

58. EKL claims three points as an established local applicant; FP does not claim localism points. Each applicant claims two points for diversity of ownership. Neither applicant claims points as a state-wide network. With respect to technical parameters, EKL's proposed 60 dBu contour would encompass 375 square kilometers with a population of 27,373. FP's proposed 60 dBu contour would encompass 1,468 square kilometers with a population of 32,663 people. FP qualifies for one point under the best technical proposal criterion because its proposal would serve at least 10% more area and population than EKL's proposal. Accordingly, EKL is credited with a total of five points, and FP is credited with a total of three points. EKL is, therefore, the tentative selectee for Group 114.

59. **Group 117.** This group consists of two applications proposing service to different communities in Michigan. West Central Michigan Media Ministries (WCMM) proposes to serve Houghton, and Gospel Opportunities, Inc. (GOI) proposes to serve L'Anse. Neither applicant claims eligibility for a fair distribution preference.<sup>86</sup> Accordingly, the applicants proceed to a point hearing.

60. Neither applicant claims points as an established local applicant or state-wide network. Each applicant certifies that it is entitled to two points for diversity of ownership. With respect to technical parameters, WCMM's proposed 60 dBu contour would encompass 4,162 square kilometers with a population of 39,089. GOI's proposed 60 dBu contour would encompass 447 square kilometers with a population of 6,965. WCMM qualifies for two points as the best technical proposal because it proposes to serve at least 25% more area and population than the GOI proposal. Accordingly, WCMM is credited with a total of four points, and GOI is credited with two points. WCMM is, therefore, the tentative selectee in Group 117.

61. **Group 118.** This group consists of four applications to serve different communities in Michigan and Wisconsin. Upper Peninsula Catholic Radio (UPCR) and Cornerstone Community Radio, Inc. (Cornerstone) each propose to serve Iron Mountain, Michigan. West Central Michigan Media Ministries (WCMMM) proposes to serve Norway, Michigan, and the Rock Radio Inc. (Rock) proposes to serve Niagra, Wisconsin. Cornerstone, WCMMM, and Rock claim that they are each eligible for a fair distribution preference based on first NCE service population totals.<sup>87</sup> UPCR does not, and is therefore, eliminated. Cornerstone would provide a first NCE service to 4,296 people; WCMMM to 4,067 people; and Rock to 5,140. The proposals of Cornerstone, WCMMM, and Rock are comparable because no proposal exceeds the other by at least 5,000 people. Therefore, we proceed to the aggregated first and second NCE service comparison. Cornerstone would provide a first or second NCE service to 9,430 people (4,296 first plus 5,134 second service); WCMMM to 6,451 people (4,067 first plus 2,384 second service); and Rock to 8,819 people (5,140 first plus 3,679 second service). The proposals of Cornerstone, WCMMM, and Rock are still comparable, and therefore proceed to a point hearing.

62. No applicant claims points as an established local applicant or state-wide network.

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<sup>85</sup> See File Nos. 167505 and 167777, Fair Distribution of Service Section, and associated exhibits. EKL's 60 dBu contour encompasses 27,373 people, and its claimed second NCE service is 4,879 people. FP's 60 dBu contour encompasses 32,663 people, and its claimed second NCE service is 7,322 people. Thus, each would provide second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>86</sup> See File Nos. 167592 and 166982, Fair Distribution of Service Section.

<sup>87</sup> See File Nos. 166677, 167569, and 165940, Fair Distribution of Service Section, and associated exhibits. Cornerstone claims that it would provide first NCE service to 4,296 of the 39,831 people within its 60 dBu contour. WCMMM claims that it would provide first NCE service to 4,067 of the 15,206 people within its 60 dBu contour. Rock claims that it would provide first NCE service to 5,140 of the 18,886 people within its 60 dBu contour. Thus, each would provide first NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

Cornerstone, WCMMM, and Rock each claim two points for diversity of ownership. With respect to technical parameters, Cornerstone's proposed 60 dBu contour would encompass 3,196 square kilometers with a population of 39,831 people; WCMMM's would encompass 1,787 square kilometers with a population of 15,206 people; and Rock's would encompass 2,048 square kilometers with a population of 18,886 people. Cornerstone qualifies for two points under the best technical proposal criterion because its proposal would serve at least 25% more area and population than Rock's next best proposal. Accordingly, Cornerstone is credited with a total of four points; WCMMM and Rock each with a total of two points. Cornerstone is, therefore, the tentative selectee for Group 118.

63. **Group 128.** This group consists of three applications to serve different communities in Missouri. Lake Area Educational Broadcasting Foundation (Lake) and Community Broadcasting, Inc. (Community) each propose to serve Sedalia. Lake separately proposes to serve Smithton. Each applicant claims that it is eligible for a fair distribution preference based on first NCE service.<sup>88</sup> Lake claims it would provide a first NCE service to 36,053 people with its Sedalia proposal and to 5,353 people with the Smithton proposal. Community would provide a first NCE service to 40,344 people. Because Lake's Sedalia proposal would provide a first NCE service to at least 5,000 more people than its Smithton proposal, Lake's Smithton proposal is eliminated. Further, because Lake's Sedalia proposal and Community propose to serve the same community, the fair distribution analysis ends, and the applicants proceed to a point hearing to determine which will serve the community of Sedalia.

64. Neither applicant claims points as an established local applicant or state-wide network. Lake and Community each claim two points for diversity of ownership. Community's diversity claim is supported by a pledge to divest its interests in two FM translator stations, which overlap with the proposed NCE station. Lake does not support its diversity claim.<sup>89</sup> Accordingly, we will not award points to Lake for diversity of ownership.<sup>90</sup> With respect to technical parameters, Lake's proposed 60 dBu contour would encompass 2,174 square kilometers with a population of 66,800 people. Community's proposed 60 dBu contour would encompass 2,792 square kilometers with a population of 84,244 people. Community qualifies for one point under the best technical proposal criterion because its proposal would serve at least 10% more area and population than Lake's proposal. Accordingly, Lake is not credited any points and Community with a total of three points. Community is, therefore, the tentative selectee for Group 128.

65. **Group 134.** This group consists of three applications to serve different communities in North Carolina. Delmarva Educational Association (Delmarva) proposes to serve Flat Rock. Gospel Broadcasting, Inc. (Gospel) proposes to serve Mount Airy, and Forsyth Community Radio, Inc. (Forsyth) proposes to serve Pilot Mountain. Each applicant claims that it is eligible for a fair distribution preference based solely on combined first and second NCE service population totals.<sup>91</sup> Delmarva would provide a

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<sup>88</sup> See File Nos. 167645, 167646, and 167000, Fair Distribution of Service Section, and associated exhibits. Lake claims that it would provide aggregated first and second NCE service to 39,218 of the 66,800 people within its Sedalia 60 dBu contour, and to 5,353 of the 16,004 people within the Smithton 60 dBu contour. Community claims that it would provide aggregated first and second NCE service to 44,641 of the 84,244 people within its proposed 60 dBu contour. Thus, each applicant would provide a combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>89</sup> Lake certifies that it has 24 existing attributable interests, but neglects to provide a map or support to demonstrate no overlap with the proposed NCE FM station. See *NCE Filing Procedures Public Notice* at 8. See also para. 11 and note 36, *supra*.

<sup>90</sup> We note that even if we awarded points to Lake for diversity of ownership, it would not change the outcome of this group.

<sup>91</sup> See File Nos. 167684, 166862, and 166639, Fair Distribution of Service Section, and associated exhibits. Delmarva's 60 dBu contour encompasses 32,531 people, and its claimed aggregated first and second NCE service is 21,204 people. Gospel's 60 dBu contour encompasses 42,567 people, and its claimed aggregated first and second NCE service is 19,135 people. Forsyth's 60 dBu contour encompasses 43,221 people, and its claimed aggregated

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first or second NCE service to 21,204 people (1,193 first service plus 20,011 second service); Gospel to 19,135 people (1,245 first service plus 17,890 second service); and Forsyth to 12,956 people (998 first service plus 11,958 second service). Because Gospel would provide a first or second NCE service to at least 5,000 more people than Forsyth, Forsyth is eliminated. The proposals of Delmarva and Gospel are comparable because neither proposal exceeds the other by at least 5,000 people. Delmarva and Gospel, therefore, proceed to a point hearing.

66. Gospel claims three points as an established local applicant; Delmarva does not. Neither applicant claims points for diversity of ownership or as a state-wide network. With respect to technical parameters, Delmarva's proposed 60 dBu contour would encompass 638 square kilometers with a population of 32,531 people. Gospel's proposed 60 dBu contour would encompass 546 square kilometers and 42,567 people. Because Gospel proposes to serve more population but Delmarva would serve more area, neither applicant can claim to serve at least 10% more in both area and population than other. Thus, neither receives any points for the best technical proposal. Accordingly, Gospel is credited with a total of three points; Delmarva with zero. Gospel is, therefore, the tentative selectee for Group 134.

67. **Group 136B.**<sup>92</sup> This group consists of four applications to serve different communities in North Carolina. Appalachian Educational Communication Corporation (AECC) proposes to serve Half Moon. The following three applicants propose to serve Jacksonville: Regeneration Outreach Center (ROC), La Ft L Aumon Np (LFLAN), and Down East Communications/Cdc/and Center for the Performing Arts (DEC). LFLAN is the only applicant that claims it is eligible for a fair distribution preference.<sup>93</sup> LFLAN, however, provides only an attachment that lists the total service area population of 112,669, and a map without a population breakdown to support its claim. Accordingly, we are unable to determine whether LFLAN satisfies the 10% threshold and 2,000-person minimum criteria.<sup>94</sup> Accordingly, because no applicant qualifies for a fair distribution preference, the applicants all proceed to a point hearing.

68. No applicant claims that it qualifies for points as an established local applicant or as a state-wide network. AECC, ROC, and DEC each claim two points for diversity of ownership.<sup>95</sup> ROC's diversity claim is based on a pledge to divest its LPFM station, KWAP-LP, Florissant, Missouri. LFLAN does not claim points under this criterion. With respect to technical parameters, AECC's proposed 60 dBu contour would encompass 598 square kilometers with a population of 89,987. LFLAN's proposed 60 dBu contour would encompass 776 square kilometers with a population of 112,669, and DEC's proposed 60 dBu contour would encompass 433 square kilometers with a population of 109,487. ROC does not specify its proposed technical parameters. No applicant is eligible for any points under the best technical proposal criterion because no proposal will serve at least 10% more in both area and population than the next best proposal. Accordingly, LFLAN is credited with zero points; AECC, ROC, and DEC are each credited with a total of two points and proceed to the tie-breaker analysis.

69. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. AECC certifies that it has attributable interests in five radio authorizations. ROC and DEC each

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first and second NCE service is 12,956 people. Thus, each would provide combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>92</sup> Group 136 originally contained 13 applications. The group was bifurcated as a result of dismissals and amendments of other applications that eliminated some of the contour overlaps among the applications. The other applications in the MX group were evaluated as Group 136A in a previous order. *See 13 Group Order, supra* note 62.

<sup>93</sup> *See* File No. 167335, Fair Distribution of Service Section and associated exhibit.

<sup>94</sup> *See supra*, para. 7, n.24.

<sup>95</sup> *See* File Nos. 167444, 169030, and 166344.

certifies that it has no attributable radio interests. AECC is therefore eliminated, and ROC and DEC proceed to the second tie-breaker – the number of pending radio applications attributable to each applicant. The applicant with the fewest applications prevails. ROC has four pending applications, and DEC has two pending applications. Accordingly, DEC prevails on the basis of this second tie-breaker and is the tentative selectee in Group 136B.

70. **Group 155.** This group consists of three applications to serve different communities in New Mexico and Texas. Hispanic American Christian Network, Inc. (HACN) proposes to serve Jal, New Mexico. In Texas, Marfa Public Radio (Marfa) proposes to serve Fort Stockton, and La Promesa Foundation (La Promesa) proposes to serve Pecos. HACN and Marfa claim that they are each eligible for a fair distribution preference based on first NCE service population totals.<sup>96</sup> La Promesa does not, and is therefore eliminated. HACN would provide a first NCE service to 3,329 people; Marfa to 3,217 people. The proposals of HACN and Marfa are comparable because neither proposal exceeds the other by at least 5,000 people, and therefore, we proceed to the aggregated first and second NCE service comparison. HACN would provide a first or second NCE service to 11,639 people (3,329 first service plus 8,310 second service); Marfa to 14,335 people (3,217 first service plus 11,138 second service). Because the HACN and Marfa proposals are still comparable, HACN and Marfa proceed to a point hearing.

71. Neither applicant claims points as an established local applicant or state-wide network. HACN and Marfa each claims two points for diversity of ownership. With respect to technical parameters, HACN's proposed 60 dBu contour would encompass 7,173 square kilometers with a population of 19,073 people. Marfa's proposed 60 dBu contour would encompass 8,848 square kilometers with a population of 14,355 people. Because neither proposal would serve at least 10% more in both area and population than the other, we do not award any points for the best technical proposal criterion. Accordingly, HACN and Marfa are each credited with two points and proceed to the tie-breaker analysis.

72. 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. HACN certifies that it holds 12 other existing authorizations; Marfa certifies that it has five existing authorizations. Marfa is, therefore, the tentative selectee for Group 155.

73. **Group 158.** This group consists of eight applications proposing service to different communities in New Mexico and Texas. New Mexico Junior College (NMJC), New Hope Baptist Church – Hobbs (NHBH), City Of Hobbs, New Mexico (CHN), Christian Ministries of the Valley, Inc. (CMVI), and Eastern New Mexico University (ENMU) each proposes to serve Hobbs, New Mexico. In Texas, Christian Television Radio Ministry (CTRM) proposes to serve Andrews; Teleamerica Communications West Palm Beach Corp. (TCWP) proposes to serve Kermit; and Hispanic American Christian Network, Inc. (HACN) proposes to serve Wink. CHN, CMVI, ENMU, and HACN each claim eligibility for a fair distribution preference.<sup>97</sup> NMJC, NHBH, CTRM, and TCWP do not claim a fair distribution preference, and are therefore, each eliminated. HACN claims to provide first NCE service to 3,329 people; CHN to 18,588 people; CMVI to 15,938 people; and ENMU to 20,954 people. HACN is

<sup>96</sup> See File Nos. 167161 and 166773, Fair Distribution of Service Section, and associated exhibits. HACN's 60 dBu contour encompasses 19,073 people, and its claimed first NCE service is 3,329 people. Marfa's 60 dBu contour encompasses 14,335 people, and its claimed first NCE service is 3,217 people. Thus, each would provide first NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>97</sup> See File Nos. 167470, 166726, 166693, and 167507, Fair Distribution of Service Section, and associated exhibits. CHN's 60 dBu contour encompasses 63,446 people, and its claimed aggregated first and second NCE service is 28,570 people. CMVI's 60 dBu contour encompasses 81,393 people, and its claimed aggregated first and second NCE service is 46,655. ENMU's 60 dBu contour encompasses 80,483 people, and its claimed aggregated first and second NCE service is 45,637 people. HACN's 60 dBu contour encompasses 19,065 people, and its claimed aggregated first and second NCE service is 11,639 people. Thus, each applicant would provide combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

eliminated because CMVI's next best proposal would serve at least 5,000 more people. Because the remaining three applications propose service to the same community, the fair distribution analysis ends, and CHN, CMVI, and ENMU proceed to a point hearing to determine which will serve the community of Hobbs, New Mexico.

74. CMVI certifies that it is not entitled to any points. CHN and ENMU each claim three points as an established local applicant and two points for diversity of ownership. CHN's diversity claim is based on a pledge to divest LPFM station KHBX, LP, Hobbs, New Mexico, upon commencement of the operation of the proposed NCE FM station. ENMU certifies that it has 15 existing authorizations, but did not submit supporting documentation to justify its diversity claim.<sup>98</sup> Accordingly, we do not award diversity of ownership points to ENMU. No applicant claims points as a state-wide network. With respect to technical parameters, CHN's proposed 60 dBu contour would encompass 4,357 square kilometers with a population of 63,446 people. CMVI's proposed 60 dBu contour would encompass 9,594 square kilometers with a population of 81,393. ENMU's proposed 60 dBu contour would encompass 8,047 square kilometers with a population of 80,483. We do not award any points for the best technical proposal because no proposal would serve at least 10% more in both area and population than the others. Accordingly, CMVI is not credited with any points, CHN is credited with five points, and ENMU is credited with three points. CHN is, therefore, the tentative selectee in Group 158.

75. **Group 164.** This group consists of six applications to serve different communities in New York. Light of Truth, Inc. (LT) proposes to serve Sable Fork; Northeast Gospel Broadcasting (NGB) proposes to serve Lake Placid; and St. Lawrence University (SLU) proposes to serve Tupper Lake (SLU Tupper Lake). LT, NGB, and SLU also each, in separate applications, propose to serve Saranac Lake. SLU Saranac Lake and SLU Tupper Lake each asserts that it is eligible for a fair distribution preference based solely on second NCE service.<sup>99</sup> LT (both proposals) and NGB (both proposals) do not claim a fair distribution preference, and are therefore, eliminated. SLU Saranac Lake would provide second NCE service to 8,128 people; SLU Tupper Lake to 6,331 people. Because the proposals are comparable, SLU Saranac Lake and SLU Tupper Lake proceed to a point hearing.

76. SLU claims that it qualifies for points as an established local applicant for both proposals. SLU does not claim points for diversity of ownership or as a state-wide network for either proposal. With respect to technical parameters, SLU Tupper Lake's proposed 60 dBu contour would encompass 1,426 square kilometers with a population of 6,609. SLU Saranac Lake's proposed 60 dBu contour would encompass 665 square kilometers with a population of 12,871. Because SLU Saranac Lake proposes to serve more population but SLU Tupper Lake would serve more area, neither applicant can claim to serve at least 10% more in both area and population than other. Thus, neither receives any points for the best technical proposal. Accordingly, SLU Tupper Lake and SLU Saranac Lake are each credited with a total of three points. At this stage, tied applications typically proceed to the tie-breaker round. In this unique case, however, because SLU is the applicant for each tied application, the tie-breaker analysis is moot. Accordingly, SLU Saranac Lake and SLU Tupper Lake are the tentative selectees for Group 164, and we direct SLU to submit, within 90 days of the release of the Order, a voluntary time-sharing agreement.<sup>100</sup>

77. **Group 194.** This group consists of three applications to serve different communities in Texas. Centro Cristiano de Vida Eterna San Antonio (CCVE) and Texas Public Radio (TPR) each

<sup>98</sup> See *NCE Filing Procedures Public Notice*, at 8. See also para. 11 and note 36, *supra*.

<sup>99</sup> See File Nos. 166840 and 166843, Fair Distribution of Service Section, and associated exhibits. SLU Saranac Lake's 60 dBu contour encompasses 13,628 people, and its claimed second NCE service is 8,128 people. SLU Tupper Lake's 60 dBu contour encompasses 6,609 people, and its claimed second NCE service is 6,331 people. Thus, each applicant would provide second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>100</sup> Alternatively, SLU may voluntarily request that the Bureau dismiss either its Saranac Lake or Tupper Lake application and only grant one proposal.

propose to serve Gonzales, and First Dallas Media, Inc. (FDM) proposes to serve Shiner. Each applicant claims that it is eligible for a fair distribution preference based on first NCE service population totals.<sup>101</sup> CCVE claims to provide first NCE service to 7,267 people; TPR to 3,180 people; and FDM to 2,265 people. Because no proposal exceeds the next best by at least 5,000 people, we consider aggregated first and second NCE service population totals. CCVE would provide a combined first and second NCE service to 11,868 people (7,267 first service plus 4,601 second service); TPR to 15,211 people (3,180 first service plus 12,031 second service); and FDM to 6,385 people (2,265 first service plus 4,120 second service). Because CCVE's proposal exceeds FDM's proposal by more than 5,000 people, FDM is eliminated. The proposals of CCVE and TPR are comparable because neither proposal exceeds the other by at least 5,000 people. CCVE and TPR, therefore, proceed to a point hearing.

78. Neither applicant claims that it qualifies for points as an established local applicant or state-wide network. CCVE and TPR each claim two points for diversity of ownership, with TPR's claim based on a pledge to divest KCTI(AM), Gonzales, Texas, and its associated FM translator station. With respect to technical parameters, CCVE's proposed 60 dBu contour would encompass 1,712 square kilometers with a population of 14,233. TPR's proposed 60 dBu contour would encompass 1,810 square kilometers with a population of 16,162. Neither applicant is eligible for any points under the best technical proposal criterion because neither proposes to serve at least 10% more in both area and population than the other. Accordingly, CCVE and TPR are each credited with a total of three points and proceed to a tie-breaker analysis.

79. 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. CCVE certifies that it has attributable interests in 10 radio authorizations.<sup>102</sup> TPR certifies that it has attributable interest in six radio authorizations. TPR therefore prevails based on this first tie-breaker and is the tentative selectee in Group 194.

80. **Group 203.** This group consists of seven applications to serve different communities in Texas. Brazos TV, Inc. (BT) and American Legion Post 248 Inc. (ALP) each proposes to serve Hooks; Casa de Destino, Inc. (CD) and East Texas Community Broadcasting (ETCB) each proposes to serve Nash; and Wiseman Ministries, Inc. (WM), Fellowship Bible Church (FBC), and Community Broadcasting, Inc. (CB) each proposes to serve Texarkana. BT, ETCB, and CB each asserts that it is eligible for a fair distribution preference based on aggregated first and second NCE service population totals.<sup>103</sup> ALP, CD, WM, and FBC do not claim a fair distribution preference, and are therefore, each eliminated. BT claims to provide combined first and second NCE service to 28,815 people (1,896 first service plus 26,919 second service); ETCB to 24,989 people (97 first service plus 24,892 second service); and CB to 23,888 people (0 first service plus 23,888 second service). These proposals are comparable because none exceeds the others by at least 5,000 people. Accordingly, BT, ETCB, and CB proceed to a point hearing.

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<sup>101</sup> See File Nos. 167129, 166682, and 165987. CCVE claims that it would provide first NCE service to 7,267 of the 14,233 people within its proposed 60 dBu contour; TPR to 3,180 of the 16,126 people within its proposed 60 dBu contour; and FDM to 2,265 of the 17,528 people within its proposed 60 dBu contour. Thus, each applicant would provide first NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>102</sup> Although it would not change the outcome of this group, we note that this number is not consistent with CCVE's separate list of attributable authorizations.

<sup>103</sup> See File Nos. 167144, 167217, and 166972, Fair Distribution of Service Section, and associated exhibits. BT's 60 dBu contour encompasses 157,637 people, and its claimed combined first and second NCE service is 28,815 people. ETCB's 60 dBu contour encompasses 94,923 people, and its claimed combined first and second NCE service is 24,989 people. CB's 60 dBu contour encompasses 136,340 people, and its claimed combined first and second NCE service is 23,888 people. Thus, each applicant would provide a combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

81. No applicant claims that it qualifies for points as an established local applicant or state-wide network. Each applicant claims two points for diversity of ownership. With respect to technical parameters, BT's proposed 60 dBu contour would encompass 5,525 square kilometers with a population of 157,637. ETCB's proposed 60 dBu contour would encompass 3,152 square kilometers with a population of 94,923. CB's proposed 60 dBu contour would encompass 3,373 square kilometers with a population of 136,340. BT qualifies for one point under the best technical proposal criterion because it proposes to serve at least 10% more area and population than CB's next best proposal. Accordingly, BT is credited with a total of three points. ETCB and CB are each credited with a total of two points. BT is, therefore, the tentative selectee in Group 203.

82. **Group 211.** This group consists of eight applications to serve different communities in Utah. University of Utah proposes to serve Duchesne (UU Duchesne), and separately, Gunnison (UU Gunnison); Specialized Educational Broadcasting (SEB) proposes to serve Ephraim; Remante Broadcasting Network (RBN) proposes to serve Fairview; Radio by Grace, Inc. (RG) proposes to serve Genola; Biblical Ministries Worldwide proposes to serve Leamington (BMW Leamington), and separately, Mona (BMW Mona); and Utah Arts Alliance (UAA) proposes to serve Spanish Fork. UU Duchesne, SEB, RBN, UU Gunnison, BMW Leamington, BMW Mona, and UAA each asserts that it is eligible for a fair distribution preference.<sup>104</sup> RG does not and is eliminated. UU Duchesne and BMW Leamington assert that they are eligible for a first NCE service preference. SEB, RBN, UU Gunnison, BMW Mona, and UAA do not, and are therefore, each eliminated. UU Duchesne claims to provide first NCE service to 4,007 people; BMW Leamington to 4,379 people. Because neither proposal exceeds the other by at least 5,000 people, we consider aggregated first and second NCE service population totals. UU Duchesne would provide combined first and second NCE service to 6,121 people (4,007 first service plus 2,114 second service); BMW Leamington to 5,556 people (4,379 first service plus 1,177 second service). Because the proposals are still comparable, UU Duchesne and BMW Leamington proceed to a point hearing.

83. UU Duchesne claims that it qualifies for points as an established local applicant; BMW Leamington does not. Each applicant claims two points for diversity of ownership, with UU Duchesne's claim based on a pledge to divest its FM translator K285BK, Tabiona, Utah. Neither applicant claims points as a state-wide network. With respect to technical parameters, UU Duchesne's proposed 60 dBu contour would encompass 3,073 square kilometers with a population of 6,121. BMW Leamington's proposed 60 dBu contour would encompass 2,688.6 square kilometers with a population of 5,556. UU Duchesne qualifies for one point under the best technical proposal criterion because it proposes to serve at least 10% more area and population than BMW Leamington's proposal. Accordingly, UU Duchesne is credited with a total of six points. BMW Leamington is credited with a total of two points. UU Duchesne is, therefore, the tentative selectee in Group 211.

#### IV. NEXT STEPS

84. **Acceptability Studies and Filing of Petitions.** Once the Bureau or Commission identifies a tentative selectee pursuant to the fair distribution analysis or point system, the next step is to consider whether the selectee's application has defects.<sup>105</sup> The Commission has studied the application of

<sup>104</sup> See File Nos. 166316, 166815, 167145, 166309, 166640, 166641, 167182, Fair Distribution of Service Section, and associated exhibits. UU Duchesne's 60 dBu contour encompasses 6,121 people, and it claims to provide a combined first and second NCE service to 6,121 people. SEB claims that it will provide combined first and second NCE service to 12,111 of the 49,923 people within its proposed 60 dBu contour; RBN to 68,210 of the 245,555 people; UU Gunnison to 11,083 of the 40,925 people; BMW Leamington to all 5,556 of the 5,556 people; BMW Mona to 2,822 of the 3,551 people; and UAA to 12,161 of the 119,400 people. Thus, each applicant would provide a combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>105</sup> If a tentative selectee's application is found unacceptable for filing, it is dismissed. The applicant then has one opportunity to submit a curative amendment and a petition for reconsideration requesting reinstatement *nunc pro* (continued....)

each tentative selectee identified herein for application defects. Each tentative selectee identified in this Order and its Appendix appears to be fully qualified to become the licensee of the new NCE FM station it has proposed. We tentatively conclude that the grant of these applications would serve the public interest, convenience and necessity. Accordingly, upon the release of this Order, the tentative selectees are accepted for filing. This triggers a 30-day period for the filing of petitions to deny.<sup>106</sup>

85. 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. Likewise a disappointed applicant that believes the tentative selectee should have received fewer points would make such an 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>107</sup>

86. **Forthcoming Staff Action.** We direct the Bureau staff, once the petition to deny period has run, to conduct a final study of each tentatively selected application in accordance with its routine processing procedures. The staff studies should consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of the tentatively selected application would serve the public interest. If the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact and that a grant of the application would be consistent with the public interest, convenience, and necessity, it shall make the grant on the basis of the fair distribution analyses and point system determinations made herein, dismiss all competing applications, deny any petition to deny, and issue a concise statement of the reasons for denying such petition and disposing of all substantial issues raised by the petition.<sup>108</sup>

87. With the exception of issues that are novel or require Commission consideration as specified below, the staff shall act on the tentatively selected applications pursuant to delegated authority. We delegate to the staff authority to act on any routine matter that may be raised, including whether the applicant is eligible, as certified, for the points awarded herein, and whether the application complies with all relevant Commission rules and policies.<sup>109</sup> The staff need not refer such matters to the full Commission 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 issues to the Commission where the exclusion or inclusion of challenged or claimed points could alter the outcome in the particular NCE group, or where a new or novel question or substantial and material question of fact otherwise exists.<sup>110</sup> In such cases, the staff would refer the mutually exclusive group to the Commission

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*tunc* within 30 days, provided that the amendment is minor and does not alter the fair distribution analysis. See 47 CFR § 73.3522(b)(1). A tentative selectee that is unable to cure the defect is disqualified. 47 CFR § 73.7004(d).

<sup>106</sup> 47 CFR § 73.7004.

<sup>107</sup> See *NCE Order on Reconsideration*, 35 FCC Rcd 10180 ¶ 13 (“A tentative selection is not final until the entire administrative process of resolving petitions to deny, and any subsequent pleadings, is complete”); 47 CFR § 1.106 (a)(1). See also *Patrick J. Vaughn, Esq.*, Letter, 22 FCC Rcd 11165 (MB 2007).

<sup>108</sup> 47 U.S.C. § 309(d).

<sup>109</sup> See, e.g., *Central Florida Educational Foundation, Inc.*, Letter, 23 FCC Rcd 1695 (MB 2008) (staff dismissal of defective application tentatively selected in a point hearing, and staff award of permit on a non-comparative basis to only remaining acceptable applicant).

<sup>110</sup> See generally *NCE Omnibus*, 22 FCC Rcd at 6162, n.230 (2007) (“If the Bureau finds that there are no new or novel questions, or material questions that would cause the tentative selectee to have fewer than or the same number of points as another applicant in the group, the staff would act on the petition(s) to deny, and by public notice grant

(continued....)

for resolution of the novel issue and/or the determination of a successor tentative selectee.

88. **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 for purposes of administrative or judicial review under section 1.103(b) of our rules with respect to any other group.<sup>111</sup>

## V. ORDERING CLAUSES

89. 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, subsequent petitions for reconsideration and reconsideration by the Commission or Bureau on its own motion, applications for review and review on the Commission's own motion, and appeals.<sup>112</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.

90. **Group 28.** Accordingly, IT IS ORDERED, that the Application filed by Free Radio Santa Nella (File No. 167151) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Santa Nella, California, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Ondas de Vida, Inc. (File No. 167248) and TO GRANT the application of Free Radio Santa Nella (File No. 167151) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

91. **Group 33.** Accordingly, IT IS ORDERED, that the Application filed by Stonewall Alliance of Chico (File No. 167629) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Willows, California, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Vida Vale Vivir, Inc. (File No. 165591) and Adventist Compassion Care Inc. (File No. 167631), and TO GRANT the application of Stonewall Alliance of Chico (File No. 167629) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must

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the application of the tentative selectee and dismiss the competing mutually exclusive application. This function is consistent with the Bureau's delegated authority. See 47 C.F.R. §§ 0.61(h), 0.283.”).

<sup>111</sup> See 47 CFR § 1.103(b).

<sup>112</sup> See 5 U.S.C. §§ 702, 704, 706; 47 U.S.C. §§ 309(d), 402(b), 405; 47 CFR §§ 1.106-08, 1.113, 1.115, 1.117 73.7004. In cases that involve separate mutually exclusive groups, but present common issues, the petitions or appeals may be filed jointly or may be consolidated at the discretion of the Commission or the court. See, e.g., FED. R. APP. P. 3(b).

maintain the comparative qualifications for which it received points, must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

92. **Group 35.** Accordingly, IT IS ORDERED, that the Application filed by Weimar Institute (File No. 167739) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Grass Valley, California, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Foothills Freqs (File No. 167139), The Association for Community Education, Inc. (File No. 167011), and Vida Vale Vivir, Inc. (File No. 165592), and TO GRANT the application of Weimar Institute (File No. 167739) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

93. **Group 58.** Accordingly, IT IS ORDERED, that the Application filed by Inverse Focus Ministry, Inc. (File No. 167430) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Rochelle, Georgia, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of The Association for Community Education, Inc. (File No. 167012) and TO GRANT the application of Inverse Focus Ministry, Inc. (File No. 167430) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

94. **Group 59A.** Accordingly, IT IS ORDERED, that the Application filed by Elijah Radio (File No. 167035) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Live Oak, Florida, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Florida Educational Radio, Inc. (File No. 167677), Learning Avenue, Inc. (File No. 167472), DND Ministries (File No. 167338), Big Bend Heritage Music Association, Inc. (File Nos. 166293 and 166684), and Central Baptist Church of Ocala, Inc. (File No. 166339), and TO GRANT the application of Elijah Radio (File No. 167035) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

95. **Group 60.** Accordingly, IT IS ORDERED, that the Application filed by Lumpkin Educational Broadcasting, Inc. (File No. 166638) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Dahlonega, Georgia, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Community Public Radio, Inc. (File No. 166735) and TO GRANT the application of by Lumpkin Educational Broadcasting, Inc. (File No. 166638) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

96. **Group 62.** Accordingly, IT IS ORDERED, That the Application filed by Living Springs Retreat (File No. 167119) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Bowdon, Georgia, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of B. Jordan Communications Corporation (File No. 166112) and Life Radio Ministries, Inc. (File No. 165527), and TO GRANT the application of Living Springs Retreat (File No. 167119) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

97. **Group 65.** Accordingly, IT IS ORDERED, that the Application filed by Restored Together Radio, Inc. (File No. 167583) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Bowman, Georgia, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Evangelical Megaphone Ministry, Inc. (File No. 166263), and TO GRANT the application of Restored Together Radio, Inc. (File No. 167583) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

98. **Group 66.** Accordingly, IT IS ORDERED, that the Application filed by Elijah Radio (File No. 167058) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Milledgeville, Georgia, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of World Federation of Pastors and Ministers of the Full Gospel, Inc. (File No. 167178) and TO GRANT the

application of Elijah Radio (File No. 167058) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

99. **Group 68.** Accordingly, IT IS ORDERED, that the Application filed by Urban Community Life (File No. 167714) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Summerville, Georgia, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Community Public Radio, Inc. (File No. 166732), La Senda Antigua, Inc. (File No. 165532), and Hector Guevara Ministry Corp. (File No. 167122), and TO GRANT the application of Urban Community Life (File No. 167714) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

100. **Group 87.** Accordingly, IT IS ORDERED, that the Application filed by Society of Saint Vincent de Paul Holy Spirit Conference (File No. 167788) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Rockford, Idaho, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of The Association for Community Education, Inc. (File No. 167327), Bible Broadcasting Network, Inc. (File No. 167288), KJ Educational Foundation (File No. 167814), Iglesia Case de Milagros (File No. 167604), Radio by Grace, Inc. (File No. 167548), Idaho Conference of Seventh-Day Adventists, Inc. (File No. 167278), and Idaho State Board of Education (File No. 166941), and TO GRANT the application of Society of Saint Vincent de Paul Holy Spirit Conference (File No. 167788) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

101. **Group 91.** Accordingly, IT IS ORDERED, that the Application filed by Poderosa Broadcasting, Inc. (File No. 166958) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in North Chicago, Illinois, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Relevant Radio, Inc. (File No. 167879) and TO GRANT the application of Poderosa Broadcasting, Inc. (File No. 166958) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in

which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

102. **Group 93.** Accordingly, IT IS ORDERED, that the Application filed by Optima Enrichment, Inc. (File No. 167847) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM stations in Delafield, Wisconsin, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Waterloo Christian Radio Corporation (File No. 167128), The Family Radio Network, Inc. (File No. 167074), and Community Public Radio, Inc. (File No. 166752), and TO GRANT the application of Optima Enrichment, Inc. (File No. 167847) CONDITIONED UPON the selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

103. **Group 94.** Accordingly, IT IS ORDERED, that the Application filed by Vanguard Association of Sunbelt Colleges Corporation (File No. 167695) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Middletown, Indiana, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of The Gospel Light Ministries, Inc. (File No. 167810), Moody Bible Institute of Chicago (File No. 167671), Pensacola Christian College, Inc. (File No. 167443), Side by Side, Inc. (File No. 166905), Olivet Nazarene University (File No. 166031), and New Beginnings Movement Inc. (File No. 166872), and TO GRANT the application of Vanguard Association of Sunbelt Colleges Corporation (File No. 167695) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

104. **Group 108B.** Accordingly, IT IS ORDERED, that the Application filed by Holy Family Communications (File No. 167720) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Strasburg, Virginia, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Positive Alternative Radio, Inc. (File No. 167366) and Massanutten Military Academy (File No. 166250), and TO GRANT the application of Holy Family Communications (File No. 167720) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use

of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

105. **Group 114.** Accordingly, IT IS ORDERED, that the Application filed by Evangelistic Knights of Our Lady, Inc. (File No. 167505) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Escanaba, Michigan, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Full Potential (File No. 167777) , and TO GRANT the application of Evangelistic Knights of Our Lady, Inc. (File No. 167505), CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points and must comply with the restrictions on station modifications and acquisitions.

106. **Group 117.** Accordingly, IT IS ORDERED, that the Application filed by West Central Michigan Media Ministries (File No. 167592) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Houghton, Michigan, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Gospel Opportunities, Inc. (File No. 166982), and TO GRANT the application of West Central Michigan Media Ministries (File No. 167592) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points and must comply with the restrictions on station modifications and acquisitions.

107. **Group 118.** Accordingly, IT IS ORDERED, that the Application filed by Cornerstone Community Radio, Inc. (File No. 166677) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Iron Mountain, Michigan, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of West Central Michigan Media Ministries (File No. 167569), The Rock Radio Inc. (File No. 165940), and Upper Peninsula Catholic Radio (File No. 167717), and TO GRANT the application of Cornerstone Community Radio, Inc. (File No. 166677) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

108. **Group 128.** Accordingly, IT IS ORDERED, that the Application filed by Community Broadcasting, Inc. (File No. 167000) is TENTATIVELY SELECTED to be awarded a construction

permit for a new NCE FM station in Sedalia, Missouri, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Lake Area Educational Broadcasting Foundation (File Nos. 167645 and 167646) and TO GRANT the application of Community Broadcasting, Inc. (File No. 167000) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations, and PROVIDED THAT, Community Broadcasting, Inc. must surrender or otherwise divest itself of its licenses for FM translator stations K234CE, Sedalia, Missouri, and K245BO, Warrensburg, Missouri, prior to commencement of program tests of the full service NCE FM station.

109. **Group 134.** Accordingly, IT IS ORDERED, that the Application filed by Gospel Broadcasting, Inc. (File No. 166862) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Mount Airy, North Carolina, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Delmarva Educational Association (File No. 167684) and Forsyth Community Radio, Inc. (File No. 166639), and TO GRANT the application of Gospel Broadcasting, Inc. (File No. 166862) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

110. **Group 136B.** Accordingly, IT IS ORDERED, that the Application filed by Down East Communications/Cdc/and Center for the Performing Arts (File No. 166344) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Jacksonville, North Carolina, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Appalachian Educational Communication Corporation (File No. 167444), Regeneration Outreach Center (File No. 169030), and La Ft L Aumon Np (File No. 167335), and TO GRANT the application of Down East Communications/Cdc/and Center for the Performing Arts (File No. 166344) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points and must comply with the restrictions on station modifications and acquisitions.

111. **Group 155.** Accordingly, IT IS ORDERED, that the Application filed by Marfa Public Radio (File No. 166773) is TENTATIVELY SELECTED to be awarded a construction permit for a new

NCE FM station in Fort Stockton, Texas, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Hispanic American Christian Network, Inc. (File No. 167161) and La Promesa Foundation (File No. 167322), and TO GRANT the application of Marfa Public Radio (File No. 166773) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

112. **Group 158.** Accordingly, IT IS ORDERED, that the Application filed by City of Hobbs, New Mexico (File No. 167470) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Hobbs, New Mexico, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of New Mexico Junior College (File No. 167689), New Hope Baptist Church – Hobbs (File No. 167507), Christian Ministries of the Valley, Inc. (File No. 166726), Eastern New Mexico University (File No. 166693), Christian Television Radio Ministry (File No. 167642), Teleamerica Communications West Palm Beach Corp. (File No. 167808), and Hispanic American Christian Network, Inc. (File No. 167156), and TO GRANT the application of City of Hobbs, New Mexico (File No. 167470) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations, and PROVIDED THAT, City of Hobbs, New Mexico, must surrender or otherwise divest itself of its license for LPFM station KHBX, LP, Hobbs, New Mexico prior to commencement of program test operations of the full service NCE FM station.

113. **Group 164.** Accordingly, IT IS ORDERED, that the Applications filed by The St. Lawrence University (File Nos. 166840 and 166843) are TENTATIVELY SELECTED to be awarded construction permits on a TIME-SHARING BASIS for new NCE FM stations in Saranac Lake, New York, and Tupper Lake, New York, and the applications ARE ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the applications, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectees' applications and it is determined that grant of the applications serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Light of Truth, Inc. (File Nos. 167519 and 167529) and Northeast Gospel Broadcasting (File Nos. 167479 and 167641). IT IS FURTHER ORDERED, that the tentative selectee applicants electronically submit, within 90 days of the release of this Order, a time-sharing agreement, in accordance with section 73.7003(c)(4) of the Commission's rules, 47 CFR § 73.7003(c)(4), and pursuant to an acceptable agreement, we direct the Media Bureau, by public notice, TO GRANT the applications of The St. Lawrence University (File Nos. 166840 and 166843) CONDITIONED UPON the selectee's compliance

with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations. If the tentative selectees are unable to reach a voluntary time-sharing agreement within the 90-day period, the tentative selectees will proceed to mandatory time-sharing, in accordance with section 73.7003(c)(5) of the Commission's rules, 47 CFR § 73.7003(c)(5).<sup>113</sup>

114. **Group 194.** Accordingly, IT IS ORDERED, that the Application filed by Texas Public Radio (File No. 166682) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Gonzales, Texas, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Centro Cristiano de Vida Eterna San Antonio (File No. 167129) and First Dallas Media, Inc. (File No. 165987), and TO GRANT the application of Texas Public Radio (File No. 166682) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations, and PROVIDED THAT, Texas Public Radio must surrender or otherwise divest itself of its licenses for KCTI(AM), Gonzales, Texas, and FM Translator K223CZ, Gonzales, Texas, prior to commencement of program tests of the full service NCE FM station.

115. **Group 203.** Accordingly, IT IS ORDERED, that the Application filed by Brazos TV, Inc. (File No. 167144) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Hooks, Texas, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of American Legion Post 248 Inc. (File No. 166384), Casa de Destino, Inc. (File No. 167614), East Texas Community Broadcasting (File No. 167217), Wiseman Ministries, Inc. (File No. 167639), Fellowship Bible Church (File No. 167102), and Community Broadcasting, Inc. (File No. 166972), and TO GRANT the application of Brazos TV, Inc. (File No. 167144) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

116. **Group 211.** Accordingly, IT IS ORDERED, that the Application filed by University of Utah (File No. 166316) is TENTATIVELY SELECTED to be awarded a construction permit for a new

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<sup>113</sup> Alternatively, St. Lawrence University may voluntarily request that the Bureau dismiss one application (File No. 166840 or 166843) and grant the other application.

NCE FM station in Duchesne, Utah, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Specialized Educational Broadcasting (File No. 166815), Remante Broadcasting Network (File No. 167145), Radio by Grace, Inc (File No. 167525), University of Utah (to serve Gunnison, Utah) (File No. 166309), Biblical Ministries Worldwide (File Nos. 166640 and 166641), and Utah Arts Alliance (File No. 167182), and TO GRANT the application of University of Utah (File No. 166316) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations, and PROVIDED THAT, University of Utah must surrender or otherwise divest itself of its license for FM Translator station K285BK, Tabiona, Utah, prior to commencement of program test operations of the full service NCE FM station.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary