

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

In the Matter of	)	
	)	
Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations filed in the October 2007 Filing Window	)	NCE MX Group Numbers 51, 57, 123, 172, 176, 177, 178, 179, 180, 184, 188, 200, 202, 203, 209, 210, 211, 218, 219, 220, 233, 234, 235, 236, 237, 245, 252, 253, 255, 256, 260, 263

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 22, 2010**

**Released: April 26, 2010**

By the Commission:

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**I. BACKGROUND**

1. By this Memorandum Opinion and Order (“Order”), the Commission considers 32 groups of mutually exclusive applications for new or modified noncommercial educational (“NCE”) FM station construction permits.<sup>1</sup> The Commission resolves such conflicting NCE proposals by applying comparative procedures codified in Part 73, Subpart K, of the Commission’s Rules (the “Rules”).<sup>2</sup> This Order uses a point system to tentatively select applications for grant and initiates a 30-day period for filing petitions to deny against the applicants tentatively selected.<sup>3</sup>

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<sup>1</sup> Each application was filed or amended during a filing window that was open from October 12, 2007, through October 22, 2007. Applications for new stations or major modifications that were on file prior to the October window, but not cut off from competing applications were required to amend their applications to supply comparative information that was not previously required to be considered along with applications filed during the window. See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Memorandum Opinion and Order, 16 FCC Rcd 5074, 5086 (2002) (“NCE MO&O”).

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

<sup>3</sup> See *id.* § 73.7004(b).

## II. GENERAL NCE PROCEDURES

2. The Commission's analysis of mutually exclusive groups of NCE applications generally consists of three main components. First, if applicants propose service to different communities, the staff performs a threshold fair distribution study pursuant to Section 307(b) of the Communications Act of 1934, as amended (the "Act").<sup>4</sup> The Commission generally has used the population data and applicant certifications submitted in conjunction with Section 307(b) claims to make these comparative determinations. Second, application conflicts not resolved under this "fair distribution" analysis<sup>5</sup> are compared under an NCE point system,<sup>6</sup> which is a simplified, "paper hearing" process.<sup>7</sup> The Commission generally has awarded the number of points claimed by each applicant in Section IV of its application. Third, if necessary, the Commission makes a tie-breaker determination, based on applicant-provided numbers and certifications contained in Section V of each application. Each of these steps is described in greater detail below.

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

3. When mutually exclusive applications for permits to construct NCE FM stations propose to serve different communities, the Media Bureau ("Bureau") performs a threshold determination as to whether grant of any of the applications would best further the fair, efficient, and equitable distribution of radio service among communities.<sup>8</sup> An NCE FM applicant is eligible to receive a Section 307(b) preference if it would provide within the proposed station's 60 dBu contour a first or second reserved band channel NCE aural service to at least ten percent of the population (in the aggregate), provided that the population served is at least 2,000 people.<sup>9</sup>

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<sup>4</sup> See 47 U.S.C. § 307(b).

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

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

<sup>7</sup> See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Notice of Proposed Rulemaking, 10 FCC Rcd 2877 (1995), *further rules proposed*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 21167 (1998), *rules adopted*, Report and Order, 15 FCC Rcd 7386 (2000) ("*NCE Order*"), *vacated in part on other grounds sub nom. National Public Radio v. FCC*, 254 F.3d 226 (D.C. Cir. 2001) *clarified*, Memorandum Opinion and Order, 16 FCC Rcd 5074 ("*NCE MO&O*"), *Erratum*, 16 FCC Rcd 10549, *recon. denied*, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002) ("*NCE Reconsideration Order*"), *aff'd sub nom. American Family Ass'n v. FCC*, 365 F.3d 1156 (D.C. Cir. 2004) ("*American Family*"), *cert. denied*, 125 S.Ct. 634 (2004) (history pertaining only to non-reserved band FM channels omitted).

<sup>8</sup> See 47 U.S.C. § 307(b). ("In considering applications for licenses ... when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."); 47 C.F.R. § 73.7002(a). A Section 307(b) analysis is ordinarily conducted at the staff level, because the Bureau has delegated authority to make 307(b) determinations in NCE cases. See *NCE Order*, 15 FCC Rcd at 7397. See also 47 C.F.R. §§ 0.61 and 0.283. In contrast, the point system analysis, which is conducted when Section 307(b) is not determinative, must be conducted by the Commission as this analysis is considered a simplified "hearing" for purposes of 47 U.S.C. § 155(c)(1). *NCE Order*, 15 FCC Rcd at 7420. The staff has referred the Section 307(b) analyses in each of the present groups to the Commission for consolidated analysis because Section 307(b) factors did not entirely resolve all applications in these groups and the Commission must, therefore, consider the remaining applications in a point hearing.

<sup>9</sup> See 47 C.F.R. § 73.7002(b). Applicants were required to use the 2000 Census population data and to count all reserved band aural authorizations, including stations for which a construction permit, but not a license, has been

4. If more than one applicant in a mutually exclusive group qualifies for a Section 307(b) preference, each applicant's first service population coverage totals are compared.<sup>10</sup> An applicant proposing a first NCE aural service to ten percent of the population and at least 2,000 people will receive a dispositive fair distribution preference over applicants for different communities that would not provide such first service.<sup>11</sup> Such an application also would receive a dispositive fair distribution preference over applicants for different communities that would provide a first NCE aural service to at least 5,000 fewer potential listeners than the next highest applicant's first service total.<sup>12</sup> If no applicant is entitled to a first service preference, we consider combined first and second NCE aural service population totals and apply the same 5,000-listener threshold. At each stage of the Section 307(b) analysis between applicants for different communities, any applicant that is comparatively disfavored in terms of eligibility or service totals is eliminated. Comparable applicants proceed to the next level of analysis, provided that different communities are still represented in the remaining pool of applicants. The process ends when the Commission determines that none of the remaining applicants can be selected or eliminated based on a Section 307(b) preference, or that each remaining applicant proposes to serve the same community. At that stage, the remaining applicants proceed to a point system analysis.

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

5. The Commission compares mutually exclusive groups of NCE FM applications under the point system set forth in Section 73.7003 of the Rules.<sup>13</sup> The NCE point system awards a maximum of seven merit points, based on four distinct criteria.<sup>14</sup> First, three points are awarded to applicants that certify that they have been local and established for at least two years. Applicants with a headquarters, campus, or 75 percent of their board members residing within 25 miles of the reference coordinates of the community of license are considered local. A governmental unit is considered local within its area of jurisdiction. To qualify for localism points based on board composition, the applicant also must certify that its governing documents require that such board composition be maintained. The applicant also must certify that it has placed documentation supporting its certification in a local public inspection file, and that it has submitted that documentation to the Commission. Any applicant awarded localism points in this Order has provided support for its certification. Thus, the specific point system determinations for each group of mutually exclusive applications that follow only discuss an applicant's documentation if it is insufficient to justify awarding localism points.

6. Second, two points are awarded for local diversity of ownership if the principal community contours of the applicant's proposed station and any other station in which any party to the application holds an attributable interest do not overlap.<sup>15</sup> To be awarded such points, an applicant's

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

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

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

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

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

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

<sup>15</sup> *See* 47 C.F.R. § 73.7003(b)(2). Parties with attributable interests are defined as the applicant, its parent, subsidiaries, their officers, and members of their governing boards. *See* 47 C.F.R. § 73.7000. Interests of certain entities providing more than 33 percent of the applicant's equity and/or debt are also attributable. *Id.*

governing documents must include a provision to maintain that diversity in the future. Applicants that are organizations governed by state charters that cannot be amended without legislative action are permitted to base the governing document component of their local diversity certifications on other safeguards that reasonably assure that board characteristics will be maintained.<sup>16</sup> Any applicant awarded diversity of ownership points in this Order has submitted copies of pertinent governing documents to support its certification or, for applicants such as state universities that are governed by laws which cannot be amended without legislative action, an appropriate alternative showing. . Thus, the specific point system determinations for each group of mutually exclusive applications that follow only discuss an applicant's documentation if it is insufficient to justify awarding diversity points. An applicant that proposes a full service NCE station that would replace an attributable FM translator may exclude the translator for calculating ownership diversity points if it has pledged to request cancellation of the translator authorization upon the new station's commencement of operations.<sup>17</sup> The Commission has stated that it will, on a waiver basis, similarly allow applicants to exclude Class D (10 watt) FM stations that will be replaced by the proposed full service NCE station.<sup>18</sup> The Bureau has extended this waiver treatment to low power FM ("LPFM") stations.<sup>19</sup> Several applicants request that the Commission clarify and further expand upon the waiver treatment of LPFM permittees applying for full service NCE FM stations, and we discuss those requests below in Section E.

7. Third, two points are awarded for certain statewide networks providing programming to accredited schools. These points are available only to applicants that cannot claim a credit for local diversity of ownership.<sup>20</sup>

8. Fourth, an applicant that proposes the best technical proposal in the group (*i.e.*, proposes service to the largest population and area, excluding substantial areas of water) may receive up to two points. The applicant receives one point if its proposed service area *and* population are ten percent greater than those of the next best area and population proposals, or two points if both are 25 percent greater than those of the next best area and population proposals as measured by each proposed station's predicted 60 dBu signal strength contour.<sup>21</sup> If the best technical proposal does not meet the 10 percent threshold, no applicant is awarded points under this criterion. In considering this criterion, we have generally accepted applicants' coverage and population claims. We have rounded any numbers expressed in decimals to the nearest whole numbers.

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

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

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

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

<sup>19</sup> See *Procedures Notice*, 22 FCC Rcd at 15052-53.

<sup>20</sup> See 47 C.F.R. § 73.7003(b)(3). The statewide network credit is an alternative for applicants that need multiple stations to serve large numbers of schools and, therefore, do not qualify for the local diversity of ownership credit.

<sup>21</sup> *Id.* § 73.7003(b)(4). See *NCE Omnibus*, 22 FCC Rcd at 6121-22 (if there is one top applicant in terms of area and population, but no single next best applicant for both factors, the Commission will compare the top applicant's proposed area to the next best area of one applicant and the top applicant's population to the next best population of another applicant).

### C. Tie-Breakers.

10. Applicants tied with the highest number of points awarded in a particular group proceed to a tie-breaker round, in accordance with Section 73.7003(c) of the Rules.<sup>22</sup> The first tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant.<sup>23</sup> The applicant with the fewest attributable authorizations prevails. If the tie is not broken by this first factor, we apply a second tie-breaker: the number of radio station applications attributable to each applicant. Applicants are required to include applications for construction permits filed for other aural services prior to the window, the current application, as well as all other applications filed within the window in the count.<sup>24</sup> If that second factor fails to break the tie, we use mandatory timesharing as the tie-breaker of last resort.

### D. Timely Documentation of Comparative Qualifications.

11. The NCE application, FCC Form 340, is certification-based, but requires applicants to document their claims by submitting supporting information both to the Commission and to a local public file.<sup>25</sup> Applicant point claims must be readily ascertainable from timely-filed application exhibits. Certifications which require the applicant to submit documentation, but which are not supported with any such timely submitted documentation cannot be credited. For example, the Commission herein rejects claims where the applicant certifies that it qualifies for points for diversity of ownership or as an established local applicant but fails to supply supporting information referred to in the certification. Every applicant claiming points for diversity of ownership must certify that the proposed station's service area would not overlap that of an attributable existing station, that its governing documents require that such diversity be maintained, and "that it has placed documentation of its diversity qualifications in a local public file and has submitted to the Commission copies of that documentation."<sup>26</sup> Similar certifications and documents are required of applicants claiming points as established local applicants.<sup>27</sup> While there is some flexibility in the type of documentation an applicant may provide, an applicant submitting no timely documentation at all cannot have made a valid certification. We have adjusted the points of such applicants downward.

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<sup>22</sup> 47 C.F.R. § 73.7003(c).

<sup>23</sup> *Id.* § 73.7003(c)(1). Applicants are required to count all attributable full service commercial and NCE radio stations and certain FM translator stations. An applicant may exclude fill-in translators and any translator which the applicant seeks to replace with its full service proposal filed in this window. Applicants requesting and receiving a rule waiver may similarly exclude an LPFM or Class D FM station.

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

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

<sup>26</sup> *See FCC Form 340*, Instructions, Question IV(2). With respect to documenting current diversity, the preferred information is a map showing no overlap or a statement that the party to the application holds no attributable interest in any station. To document future diversity, the applicant would generally submit a copy of the governing documents referenced in the certification.

<sup>27</sup> *See FCC Form 340*, Instructions, Question IV(1). Examples of acceptable documentation include corporate materials from the secretary of state, lists of names, addresses, and length of residence of board members, copies of governing documents requiring a 75 percent local governing board, and course brochures indicating that classes have been offered at a local campus for the preceding two years, etc.



### E. LPFM Licensees Applying for NCE FM Stations

12. As discussed above, the Bureau announced that applicants in the 2007 window could, upon making a sufficient showing, request to exclude otherwise attributable interests in LPFM stations. The Bureau observed that contingent pledges are generally ineffective as a mechanism to avoid attribution of broadcast interests. However, it also noted that the Commission had carved out exceptions for non-fill-in translators and Class D (10 watt) FM stations seeking to replace those secondary facilities with a full service station.<sup>28</sup> The Bureau recognized that LPFM stations, which were in their infancy at the time of the Commission's action, might now find themselves in similar circumstances. Accordingly, the Bureau advised that an applicant seeking to avoid attribution of an LPFM interest must, as part of its window-filed application, submit a request for waiver of the Rule that would otherwise result in the attribution of the LPFM interest in the applicant's point system determination and propose to surrender the LPFM interest prior to grant of its NCE construction permit application.<sup>29</sup>

13. The Commission has since recognized that the rule-compliant LPFM divestment mechanism envisioned by the Bureau could result in the unintended, potential loss of existing LPFM service for up to three years during construction of the new NCE FM stations.<sup>30</sup> Therefore, the Commission found it would be preferable to waive the rules in order to provide continuity of a local radio service to the public. Accordingly, we will permit tentative selectees to fulfill LPFM divestiture pledges by rule-compliant assignments, provided that the existing LPFM license is not mutually exclusive with the new NCE authorization, as issued. We also waive the LPFM cross-ownership rule so that an NCE FM construction permit may issue to an LPFM licensee, provided that the LPFM license must be divested prior to commencement of program tests by the new NCE FM station.<sup>31</sup>

### III. POINT SYSTEM DETERMINATIONS

14. This Section contains narrative descriptions of our point system analyses in each mutually exclusive proceeding, organized chronologically by assigned group number. Unless otherwise noted, each component of the analysis is based on applicant-provided information.<sup>32</sup> We have provided readers with an Appendix that condenses the group-by-group narratives that follow into chart form for quick reference. A more detailed guide to the Appendix and its use of abbreviations appears at the

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<sup>28</sup> See *Procedures Notice 22* FCC Rcd at 15052-53.

<sup>29</sup> *Id.*

<sup>30</sup> See *Comparative Consideration of 59 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 25 FCC Rcd 1681 (2010). See also 47 C.F.R. § 73.3598(a) (three-year construction period for FM stations).

<sup>31</sup> See 47 C.F.R. § 73.860(a). An exception to the LPFM cross-ownership rule, applicable to broadcast interests held prior to initial operations of an LPFM station, contains a similar timing provision. See *id.* § 73.860(b).

<sup>32</sup> Specifically, information relating to the applicants' Section 307(b) claims including, where applicable, populations receiving first and/or second NCE radio services were reported by the applicants in their responses to Questions III(a) and (b) of their applications and associated exhibits. Claims to qualify as established local applicants, for diversity of ownership, and as statewide networks were reported in the responses to Questions IV(1), (2) and (3) respectively, and in supporting documentation. Applicants reported the area and population figures used in our analyses of technical parameters in response to Question IV(4) and associated exhibits. Tie-breaker information concerning the applicants' attributable interests in other radio authorizations were reported in response to Question V(1).

beginning of that Section.

15. At the outset, we note that each group of applicants has had an opportunity to resolve application conflicts by settlement and technical amendment. In addition, we note that applicants were required to report their qualifications as of the date of application (or close of the filing window for already pending, non-cut-off applications). Any changes made thereafter may potentially have diminished, but could not enhance, an applicant's comparative position.<sup>33</sup> Thus, when considering applications in which comparative information has been amended, we have used the least favorable information provided.

16. **Group 51.** This group consists of four mutually exclusive applications proposing service to different communities. Calvary Fellowship, Inc. ("CFI") proposes to serve Darlington, Florida. Defuniak Springs Seventh-Day Adventist Church ("DSSDA") proposes to serve Defuniak Springs, Florida. Joshua Springs Calvary Chapel ("Joshua") proposes to serve Paxton, Florida. TBTA Ministries ("TBTA") would serve Samson, Alabama. When applicants propose different communities, the Commission must first determine whether any applicant qualifies for a dispositive fair distribution preference. Three applicants in this group claim eligibility for a fair distribution preference.<sup>34</sup> Joshua does not and is eliminated. None of the remaining applicants claims to be eligible for a preference based on first service alone. CFI, DSSDA, and TBTA claim an aggregated first and second NCE service to 7,485 people, 12,819 people,<sup>35</sup> and 6,490 people, respectively. DSSDA's claim exceeds that of CFI by at least 5,000 people, but it appears to us that DSSDA's claim is overstated by several hundred people, which would be enough to place its claim within 5,000 of CFI, if one were to accept CFI's claimed population (which appears similarly overstated). Indeed, it appears that each applicant in this group has calculated a greater population in this area than the population that could be claimed using a Commission-approved methodology. The question of whether DSSDA qualifies for a decisive fair distribution preference over CFI and TBTA does not, however, alter the outcome of the proceeding, because as described below, DSSDA also would prevail over CFI and TBTA in a point system analysis.

17. DSSDA claims three points as an established local applicant. CFI and TBTA certify that each is not entitled to any points under this criterion. CFI and DSSDA claim two points each for diversity of ownership. CFI supports its claim with governing documents requiring that diversity be maintained

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<sup>33</sup> We have repeatedly disallowed the enhancement of qualifications in NCE comparative cases, consistent with 47 C.F.R. § 73.7003(e), and the Commission's historical concern that attempts to submit late information in comparative proceedings would "lead to abuse of the Commission's processes, applicant gamesmanship, and unfair advantage." *Silver Springs Communications*, Memorandum Opinion and Order, 3 FCC Rcd 5049, 5050 (1988), *rev. denied*, 4 FCC Rcd 4917 (1989) (concluding that the rejection of an untimely filed notice of appearance in a comparative case is necessary in order to maintain the integrity of the Commission's processes and to ensure that an applicant's gamesmanship does not result in an unfair advantage). See *Comparative Consideration of 59 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 25 FCC Rcd 1681 at ¶¶48, 59 (2010). *Threshold Fair Distribution Analysis of 28 Groups*, Memorandum Opinion and Order, 24 FCC Rcd 12390, n.25 (MB 2009); *Threshold Fair Distribution Analysis of 21 Groups*, Memorandum Opinion and Order, 24 FCC Rcd 3873, 3881 (MB 2009).

<sup>34</sup> See CFI, DSSDA, and TBTA Applications, Questions III(1), III(2), and associated exhibits. CFI's 60 dBu contour encompasses 13,198 people, and its claimed aggregated first and second NCE service is 7,485 people. DSSDA's 60 dBu contour encompasses 27,713 people, and its claimed aggregated first and second NCE service is 12,819 people. TBTA's 60 dBu contour encompasses 6,490 people, and its claimed aggregated first and second NCE service is all 6,490 people. Thus, each would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>35</sup> DSSDA also amended its proposal after close of the filing window and indicates that the amended proposal would provide aggregated first and second service to 14,521 people. However, DSSDA recognizes that comparative enhancements are prohibited and properly disclaims any comparative advantage from the amendment.

and will be credited with two points. DSSDA provides no documentation that its governing documents require that diversity be maintained in the future. Accordingly, DSSDA is not credited with points under this criterion. No applicant claims points as a statewide network. With respect to technical parameters, CFI's proposed 60 dBu contour would encompass 1,117 square kilometers with a population of 13,198. DSSDA's proposed 60 dBu contour would encompass 1,816 square kilometers with a population of 25,551, using the lowest numbers provided.<sup>36</sup> TBTA's proposed 60 dBu contour would encompass 723 square kilometers with a population of 6,490. DSSDA qualifies for two points as the best technical proposal because it proposes to serve at least 25 percent more area and population than CFI's next best proposal. Accordingly, CFI is credited with a total of two points, DSSDA with a total of five points, and TBTA is not credited with any points. Thus, DSSDA is the tentative selectee in Group 51.

18. **Group 57.** This group consists of the mutually exclusive applications of Neighborhoods United for a Better Alachua, Inc. ("NUBA") and Westside Baptist Church of Gainesville ("Westside"). Each proposes to serve the community of High Springs, Florida. Each certifies that it is entitled to three points as an established local applicant. NUBA and Westside claim two points each for diversity of ownership. NUBA supports its diversity claim with by-laws amended October 17, 2007. Westside submits by-laws as amended in 1994, six years prior to our establishment of a point system. Thus, the 1994 by-laws contain no provision requiring Westside to maintain diversity into the future. Accordingly, Westside will not receive points under this criterion. Neither applicant claims points as a statewide network. With respect to technical parameters, NUBA's proposed 60 dBu contour would encompass 120 square kilometers with a population of 6,528. Westside's proposed 60 dBu contour would encompass 303 square kilometers with a population of 10,661. Westside qualifies for two points under the best technical proposal criterion because its proposal would serve at least 25 percent more area and population than NUBA's proposal. Accordingly, NUBA and Westside are credited with a total of five points each, and will proceed to a tie-breaker.

19. 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. NUBA and Westside certify respectively that each 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. NUBA and Westside certify respectively that each has no pending applications other than the current application.<sup>37</sup> Thus, the tie has not been broken under the first two tie-breakers. Accordingly, we proceed to the tiebreaker of last resort – mandatory timesharing. NUBA and Westside are both tentative selectees in Group 57 on a time-sharing basis.

20. **Group 123.** This group originally consisted of three applicants that proposed to serve different communities in Michigan. Family First Radio ("FFR") would serve Three Rivers. Vineyard Academy ("Vineyard") would serve Vicksburg. Smile FM ("Smile") proposed to serve Wakeshma Township. Upon preliminary analysis, the staff determined that Smile made the best fair distribution showing<sup>38</sup> but dismissed Smile's application as unacceptable for filing due to an engineering error. Smile's pending Application for Review, which seeks reinstatement, has the potential to alter the

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<sup>36</sup> See *supra* para. 15.

<sup>37</sup> NUBA and Westside both express this fact by reporting "zero" pending applications. We note that NUBA and Westside each should have included its current application for a total of one pending application each. We have corrected for this error by each applicant.

<sup>38</sup> Smile's proposal to provide an aggregated first and second NCE service to a population of 86,639 exceeded by at least 5,000 people that of the next best proposal of Vineyard to provide such service to a population of 61,987.



composition of Group 123. Accordingly, we consider Smile's filing before undertaking any comparative analysis.

21. On May 22, 2008, the staff dismissed Smile's application for violation of Section 73.510(a) of the Rules, which governs antenna patterns.<sup>39</sup> The dismissal letter identified the largest violation of 5.82 db per 10 degrees occurring between the azimuths of 210-220 degrees. In fact, there were additional violations between the 170-180, 270-280, 280-290, and 290-300 azimuths. However, not all such violations were of equal relevance, because some were not in the direction of a short-spaced station. In a June 18, 2008, telephone conversation with the applicant, Commission engineering staff informed the applicant that the dismissal letter, while correctly identifying a Section 73.510(a) rule violation, had specified the wrong value and azimuth as precluding acceptance of the application. The matter that made Smile's application unacceptable for filing under Section 73.510(a) was a variation of the antenna pattern by 2.15 db per 10 degrees between the azimuths of 170 and 180 degrees.

22. Under Commission policy, NCE applicants are given one 30-day opportunity to correct all acceptability defects and to be reinstated *nunc pro tunc*.<sup>40</sup> On June 18, 2008, Smile amended its application to change the azimuth value at 170 degrees from 0.220 to 0.224. Smile filed a Petition for Reconsideration on June 30, 2008, seeking reinstatement of its application. The staff, on August 6, 2008, determined that Smile's amendment of its directional antenna pattern was sufficient to correct the Section 73.510(a) error and, therefore, granted reconsideration and reinstated the application. Further examination of the application that same day, however, revealed another defect – a violation of Section 73.215(e) concerning minimum distance separation required to a short-spaced antenna location. Accordingly, the staff dismissed Smile's application a second time. On September 10, 2008, Smile filed another amendment and petition for reconsideration, attempting to correct the spacing defect. The staff dismissed these filings on October 3, 2008, because applicants are permitted only one amendment to correct any and all acceptability defects. Smile's November 3, 2008, Application for Review is now before us for consideration.

23. Smile argues that there was no Section 73.510(a) error in its application. It contends that the matter identified by the staff on May 22, 2008, was based on a computer error. Smile states that its first petition for reconsideration, filed on June 30, 2008, merely called this staff error to the Commission's attention. Smile acknowledges that, on June 18, 2008, it corrected the 170 degree field value from 0.220 to 0.224, but argues that the amendment was not needed to correct any Section 73.510(a) error. Rather, Smile states that its amendment corrected a different, self-discovered "truncation" defect, which it argues is *de minimis*. Smile maintains, therefore, that its June 2008 filings did not exhaust its one opportunity to seek reinstatement following an acceptability defect, and that it should be able to use that opportunity with respect to the newly discovered Section 73.215(e) error.

24. Public Notice of the dismissal of an application triggers a 30-day period in which the applicant has one opportunity to perfect its application, including any errors not specifically identified by the staff. Even had the staff, as Smile argues, erred in identifying a Section 73.510(a) defect, dismissal of its application nevertheless triggered this period, and obligated Smile to undertake a complete and thorough analysis of its application to correct all material errors, including any not specifically identified in the dismissal letter.<sup>41</sup> As discussed above, Smile filed an amended application within the 30-day period

<sup>39</sup> See 47 C.F.R. § 73.510(a).

<sup>40</sup> See *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776, 49 Fed. Reg. 47331 (Aug. 2, 1984).

<sup>41</sup> See *id.* at 47332 (applicants are expected "to completely review all portions of a returned or dismissed application. Thereafter, if the same application is returned or dismissed a second time, it will not be afforded *nunc pro tunc* reconsideration rights.").

that was reinstated *nunc pro tunc*. It did not, however, correct a Section 73.215(e) spacing violation. Thus, the application remained unacceptable for filing at the end of the 30-day period for *all* corrections of acceptability errors.<sup>42</sup> The staff's rejection of an additional attempt to correct acceptance defects was fully consistent with the Commission's longstanding policy placing ultimate responsibility on the applicant to perfect its application and disallowing a piecemeal approach to correcting patently defective applications.<sup>43</sup> Smile's Application for Review is, therefore, denied and its dismissed application is not entitled to comparative consideration with the other applications in Group 123.

25. The remaining applicants, FFR and Vineyard, propose service to two different communities. When applicants propose different communities, the Commission must first determine whether any applicant is credited with a dispositive fair distribution preference. Each applicant claims that it is eligible for a fair distribution preference.<sup>44</sup> FFR and Vineyard propose to provide a first NCE service to respective populations of 15,660, and 13,275. These proposed levels of first service are comparable. FFR proposes aggregated first and second service to 61,985 people (15,660 first service plus 43,325 second service). Vineyard proposes aggregated first and second service to 61,987 people (13,275 first service plus 48,712 second service). The fair distribution analysis is not dispositive because neither would serve at least 5,000 more people than the other. Accordingly, the comparable proposals of FFR and Vineyard must proceed to a point hearing.

26. Vineyard claims three points as an established local applicant. FFR does not. FFR and Vineyard claim two points each for diversity of ownership. Neither applicant claims points as a statewide network. With respect to technical parameters, FFR's proposed 60 dBu contour would encompass 1,771 square kilometers with a population of 66,703. Vineyard's proposed 60 dBu contour would encompass 1,894 square kilometers with a population of 65,756 people. Neither applicant qualifies for points under the best technical proposal criterion because neither proposes to serve at least ten percent more area and population than the other. Accordingly, FFR is credited with a total of two points and Vineyard is credited with a total of five points. Vineyard is the tentative selectee in Group 123.

27. **Group 172.** The two applicants in this group propose service to different communities in New Hampshire. Seacoast Arts and Cultural Alliance ("SACA") would serve Dover and Granite State Educational Fellowship ("GSEF") would serve Madbury. When applicants propose different communities, the Commission must first determine whether any applicant is credited with a dispositive fair distribution preference. Each applicant in this group claims eligibility for a fair distribution preference.<sup>45</sup> Neither asserts a preference for first NCE service alone, relying solely on combined first

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<sup>42</sup> See *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, 49 Fed. Reg. at 47331 (noting "that a failure of the staff to discern an omission or defect at one stage in the process does not preclude appropriate action upon later discovery.").

<sup>43</sup> See *Saddleback Community College*, Memorandum Opinion and Order, 11 FCC Rcd 11938, 11941 (1996) ("As the 1984 Policy Statement made clear, *nunc pro tunc* acceptance of such second amendments is unfair to other applicants in a comparative proceeding who have prepared properly executed applications.").

<sup>44</sup> See FFR and Vineyard Applications, Questions III(1), III(2), and associated exhibits. FFR's 60 dBu contour encompasses 66,703 people, and its claimed aggregated first and second NCE service is 61,985 people. Vineyard's 60 dBu contour encompasses 65,756 people and its claimed aggregated first and second service is 61,987 people. Thus, each would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>45</sup> See SACA and GSEF Applications, Questions III(1), III(2), and associated exhibits. SACA's 60 dBu contour encompasses 30,517 people, and its claimed aggregated first and second NCE service is 19,986 people. GSEF's 60 dBu contour encompasses 32,175 people, and its claimed aggregated first and second NCE service is 18,284 people. Thus, each would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

and second NCE service population totals. SACA's and GSEF's aggregated first and second NCE service to 19,986 people and 18,284 people, respectively are comparable. Accordingly, they will proceed to a point hearing.

28. SACA claims three points as an established local applicant. GSEF does not. Each claims two points for diversity of ownership, with SACA's claim based on a pledge to divest LPFM station WSCA-LP, Portsmouth, New Hampshire and an associated waiver request. In accordance with the waiver policy set forth above, we waive attribution of SACA's LPFM station for purposes of this point hearing and credit SACA with two points under the diversity of ownership criterion. GSEF provides no support for its diversity claim. Accordingly, we do not award diversity points to GSEF. Neither applicant claims points as a statewide network. With respect to technical parameters, SACA's proposed 60 dBu contour would encompass 160 square kilometers with a population of 30,317. GSEF's proposed 60 dBu contour would encompass 143 square kilometers with a population of 32,175. Neither applicant qualifies for any points as the best technical proposal because neither proposes to serve at least ten percent more area and population than the other. Accordingly, SACA is credited with a total of five points, and GSEF is not credited with any points.<sup>46</sup> SACA is the tentative selectee in Group 172.

29. **Group 176.** This group consists of the mutually exclusive applications of Abundant Life Broadcasting ("ALB") for Las Vegas, New Mexico, and New Mexico Highlands University Foundation ("NMHUF") for Romeroville, New Mexico. When applicants propose different communities, the Commission must first determine whether any applicant is credited with a dispositive fair distribution preference. Each applicant in this group claims eligibility for a fair distribution preference.<sup>47</sup> ALB's and NMHUF's respective first NCE service claims of 3,941 and 2,546 people are comparable. They claim an aggregated first and second NCE service to 13,625 people and 21,974 people, respectively. However, NMHUF's claim is overstated because it neglected to consider a construction permit issued in 2005 for KRRE(FM), Las Vegas, New Mexico (File No. BNPED-20000118ABX) that authorized service to the same area. Taking that authorization into account, the aggregated first and second NCE service of each applicant is comparable to that of the other. Accordingly, the applicants will proceed to a point hearing.

30. NMHUF claims three points as an established local applicant. ALB certifies that it is not entitled to any points under this criterion. ALB and NMHUF claim two points each for diversity of ownership. ALB's claim is based on a pledge to surrender for cancellation its license for FM translator station K212EF, Las Vegas, New Mexico. However, ALB provides no documentation that its governing documents require that diversity be maintained in the future. Accordingly ALB is not credited with points under this criterion. No applicant claims points as a statewide network. With respect to technical parameters, ALB's proposed 60 dBu contour would encompass 3,242 square kilometers with a population of 23,334. NMHUF's proposed 60 dBu contour would encompass 2,572 square kilometers with a population of 21,974. Neither applicant qualifies for any points as the best technical proposal because neither proposes to serve at least ten percent more area and population than the other. Accordingly, ALB is not credited with any points, and NMHUF is credited with a total of five points. Thus, NMHUF is the tentative selectee in Group 176.

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<sup>46</sup> Had the Commission accepted GSEF's claim of two diversity points, SACA nevertheless would have prevailed because GSEF's claimed total of two points would not exceed SACA's five-point total.

<sup>47</sup> See ABA and NMHUF Applications, Questions III(1), III(2), and associated exhibits. ABA's 60 dBu contour encompasses 23,334 people, and its claimed aggregated first and second NCE service is 13,625 people. NMHUF's 60 dBu contour encompasses 21,974 people, and its claimed aggregated first and second NCE service is all 21,974 people. Thus, each would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

31. **Group 177.** This group consists of the mutually exclusive applications of American Family Association (“AFA”), Regents of New Mexico Highlands University (“Regents”), and La Promesa Foundation (“LPF”). Each proposes to serve the community of Clayton, New Mexico. Regents certifies that it is entitled to three points as an established local applicant. AFA and LPF do not claim any points under this criterion. Each applicant in this group claims two points for diversity of ownership. LPF bases its diversity claim on a pledge to surrender for cancellation its license for FM translator station K217CM, Clayton, New Mexico. AFA does not support its diversity claim. Accordingly, AFA will not receive points under this criterion. None of the applicants claims points as a statewide network. With respect to technical parameters, AFA’s proposed 60 dBu contour would encompass 2,037 square kilometers with a population of 3,707. Regents’ proposed 60 dBu contour would encompass 2,508 square kilometers with a population of 3,846. LPF’s proposed 60 dBu contour would encompass 360 square kilometers with a population of 2,766. No applicant qualifies for any points as the best technical proposal because the applicant that would serve the largest area and population would not serve at least ten percent more people than the next best applicant. Accordingly, Regents is credited with a total of five points, LPF with a total of two points, and AFA is not credited with any points.<sup>48</sup> Thus, Regents is the tentative selectee in Group 177.

32. **Group 178.** This group consists of the mutually exclusive applications of American Family Association (“AFA”) and Regents of New Mexico Highlands University (“Regents”). Each proposes to serve the community of Raton, New Mexico. Regents certifies that it is entitled to three points as an established local applicant. AFA does not claim any points under this criterion. Each applicant in this group claims two points for diversity of ownership. AFA bases its diversity claim on a pledge to cancel its license for FM translator station K211CE, Raton, New Mexico. AFA does not support its diversity claim with governing documents demonstrating that diversity will be maintained in the future. Accordingly, AFA will not receive points under this criterion. Neither applicant claims points as a statewide network. With respect to technical parameters, AFA’s proposed 60 dBu contour would encompass 316 square kilometers with a population of 8,190. Regents’ proposed 60 dBu contour would encompass 711 square kilometers with a population of 8,240. Neither applicant qualifies for any points as the best technical proposal because neither proposes to serve at least ten percent more area and population than the other. Accordingly, Regents is credited with a total of five points, and AFA is not credited with any points.<sup>49</sup> Thus, Regents is the tentative selectee in Group 178.

33. **Group 179.** This group consists of the mutually exclusive applications of Community Access TV of Silver City (“Access”) and Regents, New Mexico State University (“Regents”). Each proposes to serve Silver City, New Mexico. Access and Regents claim three points each as an established local applicant. Only Access asserts that it is entitled to two points for diversity of ownership. Access does not, however, support its diversity claim and, therefore, will not receive points under this criterion. Neither claims points as a statewide network. With respect to technical parameters, Access’s proposed 60 dBu contour would encompass 1,742 square kilometers with a population of 18,913. Regents’ proposed 60 dBu contour would encompass 16,391 square kilometers with a population of 48,955. Regents qualifies for two points under the best technical proposal criterion because its proposal would serve at least 25 percent more area and population than Access’s proposal. Accordingly, Access is credited with a total of three points, and Regents is credited with a total of five points. Regents is the tentative selectee in Group 179.

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<sup>48</sup> Had the Commission accepted AFA’s claim of two diversity points, Regents nevertheless would have prevailed because AFA’s claimed total of two points would not exceed Regents’ five-point total.

<sup>49</sup> Had the Commission accepted AFA’s claim of two diversity points, Regents nevertheless would have prevailed because AFA’s claimed total of two points would not exceed Regents’ five-point total.



34. **Group 180.** This group consists of the mutually exclusive applications of One Ministries, Inc. (“OMI”) and Regents of New Mexico State University (“Regents”). Each proposes to serve the community of Truth or Consequences, New Mexico. Regents certifies that it is entitled to three points as an established local applicant. OMI does not. Regents certifies that it is not entitled to any points for diversity of ownership. OMI claims two points for diversity of ownership based on a pledge to divest LPFM station KQSL-LP, Penngrove, California. In accordance with a waiver policy to consider LPFM interests non-attributable for purposes of points hearings upon a pledge to divest such interests, we hereby waive the attribution standards for this limited purpose and credit OMI with two points under this criterion.<sup>50</sup> Each applicant in this group states that it is not entitled to any points as a statewide network. With respect to technical parameters, OMI’s proposed 60 dBu contour would encompass 3,802 square kilometers with a population of 14,252. Regents’ proposed 60 dBu contour would encompass 2,785 square kilometers with a population of 12,923. OMI qualifies for one point under the best technical proposal criterion because its proposal would serve at least 10 percent more area and population than Regents’ proposal. Accordingly, OMI and Regents are credited with a total of 3 points each, and must proceed to a tie-breaker.

35. 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. OMI certifies that it has no attributable interest in any radio authorization. Regents certifies that it has attributable interests in eight radio authorizations. OMI therefore prevails based on this first tie-breaker and is the tentative selectee in Group 180.

36. **Group 184.** This group consists of the mutually exclusive applications of Centro Cristiano Vida Abundante (“CCVA”) for Jessup, Nevada and Living Proof, Inc. (“LPI”) for Wadsworth, Nevada. Neither applicant claims a fair distribution preference and, thus, we proceed to a point system analysis. Neither applicant claims that it qualifies for any points as an established local applicant. Each applicant claims two points for diversity of ownership. Neither applicant claims points as a statewide network. With respect to technical parameters, CCVA’s proposed 60 dBu contour would encompass 5,491 square kilometers with a population of 6,297. LPI’s proposed 60 dBu contour would encompass 3,367 square kilometers with a population of 100,069. Neither applicant qualifies as the best technical proposal because neither proposes to serve at least ten percent more area and population than the other. Accordingly, CCVA and LPI receive a total of two points each, and must proceed to a tie-breaker.

37. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. CCVA certifies that it has an attributable interest in one radio authorization. LPI certifies that it has attributable interests in 16 radio authorizations. CCVA therefore prevails based on this first tie-breaker criterion and is the tentative selectee in Group 184.

38. **Group 188.** This group currently consists of two mutually exclusive applications for communities in New York and Pennsylvania. The B. Stephen Demchuk Foundation (“Demchuk”) proposes service to Glen Spey, New York. Northeastern Pennsylvania Educational Television Association (“NPET”) proposes to serve Honesdale, Pennsylvania. The group originally included a third applicant, Eastern U.S. Taiwan Culture Promotion Association, Inc. (“EUSTC”), which proposed to serve Port Jervis, New York. The staff dismissed EUSTC’s application for an engineering defect and EUSTC filed a petition for reconsideration. EUSTC’s petition, which seeks reinstatement, has the potential to alter the composition of Group 188. Accordingly, we consider whether to reinstate EUSTC’s application before undertaking the comparative analysis.

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<sup>50</sup> See 47 C.F.R. § 73.3555(e).



39. The staff, upon preliminary analysis of Group 188, determined that no applicant in the group was entitled to a decisive fair distribution preference and observed that EUSTC had claimed the most points. Consistent with routine practice, the staff determined that it would recommend EUSTC to the Commission as tentative selectee in Group 188 and examined the application to determine whether it was acceptable for filing. The staff determined that EUSTC's proposal violated Section 73.509 of the Rules<sup>51</sup> due to an overlap with a permit for the modification of WLJP, Monroe, New York. Under Commission policy, NCE applicants are given one 30-day opportunity to correct all acceptability defects and to be reinstated *nunc pro tunc*.<sup>52</sup> EUSTC did not amend its proposal within 30 days of dismissal. Rather, it argues that it has had no opportunity to amend because the Commission has not released any order naming it as tentative selectee. EUSTC also argues that it did not have to protect the WLJP modification because that application was defective as originally filed.

40. EUSTC's argument that it did not have to protect the WLJP modification lacks merit. EUSTC filed its application on October 17, 2007. At that time, WLJP had a pending, September 6, 2007, application to modify its own station (File No. BPED-20070906AAR). It is undisputed that EUSTC failed to protect the previously-filed WLJP application. It is also undisputed that the WLJP application contained engineering defects, which resulted in its January 4, 2008 dismissal. On February 6, 2008, WLJP sought reinstatement *nunc pro tunc* by amending its application to correct the defects. Consistent with staff policy, the WLJP application was reinstated based on a finding that the WLJP amendment did not increase the overlap with the EUSTC application on file. The WLJP application was granted on May 7, 2008. EUSTC did not oppose WLJP's application during the time it was under review by the staff. In addition, EUSTC's argument would require us to accept that corrective amendments by first-in-time applications must fully protect areas of prohibited overlap caused by defective, subsequently-filed applications. Accordingly, we reject EUSTC's argument as both untimely and meritless.

41. We also reject EUSTC's claim that the staff's dismissal of its application prior to its being formally named as a tentative selectee deprived EUSTC of an opportunity to amend. EUSTC argues that, pursuant to Section 73.3522 of the Rules,<sup>53</sup> only a formal announcement that an NCE applicant is a tentative selectee will trigger an NCE applicant's 30-day period to amend. That is incorrect. Section 73.3522(b) identifies several circumstances in which an applicant may receive one opportunity to amend if its application is found defective after selection by the staff or Commission. The Rule does not bar staff review or dismissal of applications of potential tentative selectees for defects at any point prior to release of a Commission order. Moreover, Section 73.3522(b)(3) provides for the return and amendment of defective NCE applications other than those of tentative selectees.<sup>54</sup> Staff review of potential selectees for defects is routine policy, as we have acknowledged previously.<sup>55</sup> In the present case, the staff was preparing to recommend EUSTC as tentative selectee because a preliminary analysis reflected that EUSTC claimed the largest number of points in Group 188. In accordance with standard procedures, the staff performed a technical review of the application, found it unacceptable, and dismissed the

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<sup>51</sup> 47 C.F.R. § 73.509.

<sup>52</sup> See *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776, 49 Fed. Reg. 47331 (Aug. 2, 1984).

<sup>53</sup> 47 C.F.R. § 73.3522.

<sup>54</sup> *Id.* at § 73.3522(b)(3). See also *id.* at § 73.3573(e)(4) (timely-filed NCE applications for new facilities or major modifications that are determined to be unacceptable for filing will be returned and subject to the amendment requirements of Section 73.3522).

<sup>55</sup> See *Comparative Consideration of 59 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 25 FCC Rcd 1681 at ¶136 (2010) (Commission-level point analysis noting prior staff findings that the applications therein were acceptable).

application. EUSTC never filed any curative amendment and remains in violation of Section 73.509 of the Rules. Accordingly, EUSTC's petition for reconsideration is denied and its dismissed application is not entitled to comparative consideration with the other applications in Group 188. The other two applicants, Demchuk and NPET, will proceed to a comparative analysis.

42. When applicants propose different communities, the Commission must first determine whether any applicant is credited with a dispositive fair distribution preference. While Demchuk and NPET each claim eligibility for a fair distribution preference, neither asserts a preference based on first NCE service alone. Instead, each applicant relies solely on combined first and second NCE service population totals.<sup>56</sup> Demchuk and NPET claim aggregated service to respective populations of 4,804 and 3,000. These claims are comparable. Accordingly, Demchuk and NPET will proceed to a points hearing.

43. Demchuk claims three points as an established local applicant. NPET certifies that it is not entitled to any points under this criterion. Each applicant in this group claims two points for diversity of ownership. Demchuk supports its claim with governing documents requiring that diversity be maintained. NPET provides only a list of existing attributable interests, without demonstrating that it is required to maintain diversity in the future. Accordingly, only Demchuk will be credited with points under this criterion. Neither applicant claims points as a statewide network. With respect to technical parameters, Demchuk's proposed 60 dBu contour would encompass 524 square kilometers with a population of 5,937. NPET's proposed 60 dBu contours would encompass 621 square kilometers with a population of 21,569. NPET qualifies for one point under the best technical proposal criterion because its proposal would serve at least 10 percent more area and population than Demchuk. Accordingly, Demchuk is credited with a total of five points, and NPET with a total of one point. Demchuk is the tentative selectee in Group 188.

44. **Group 200.** The two applicants in this group would serve different communities in Oklahoma. Iglesia Jesucristo Es Mi Refugio de Austin ("IJMRA") proposes to serve Dover. New Life Mission ("NLM") proposes to serve Loyal. Each states that it is not eligible for a fair distribution preference. Accordingly, each will proceed to a point hearing.

45. NLM claims three points as an established local applicant. However, it submits no information to support its claim. IJMRA acknowledges that it is not eligible for any points under this criterion. Accordingly, neither applicant will receive any points under this criterion. Each claims two points for diversity of ownership. NLM does not support its diversity claim and, thus will not receive any points under this criterion. Neither applicant claims points as a statewide network. With respect to technical parameters, IJMRA's proposed 60 dBu contour would encompass 370 square kilometers with a population of 1,459. NLM's proposed 60 dBu contour would encompass 1,537 square kilometers with a population of 3,742. NLM qualifies for two points under the best technical proposal criterion because its proposal would serve at least 25 percent more area and population than IJMRA. Accordingly, IJMRA and NLM are credited with a total of two points each. The applications will proceed to a tie-breaker.

46. 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. IJMRA and NLM certify respectively that each has no attributable interests in any radio authorization. Accordingly, we proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. IJMRA certifies that it has ten pending

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<sup>56</sup> See Demchuk and NPET Applications, Questions II(1), III(2), and associated exhibits. Demchuk's 60 dBu contour encompasses 5,937 people and its claimed aggregated first and second NCE service is 4,804 people. NPET's 60 dBu contour encompasses 21,569 people, and its claimed aggregated first and second NCE service is 3,000 people. Thus, each would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

applications. NLM certifies that it has no pending application other than the instant application. It erroneously expressed this fact as having “zero” applications. We have revised NLM’s claim to reflect that it has the one pending application under consideration here. Regardless, NLM prevails based on this second tie-breaker criterion and is the tentative selectee in Group 200.

47. **Group 202.** In this group, South Central Oklahoma Christian Broadcasting, Inc. (“SCOCBI”) proposes to serve Chickasha, Oklahoma and Norman Unitarian Universalist Fellowship (“Norman”) proposes to serve Dibble, Oklahoma. The staff had tentatively selected SCOCBI through a fair distribution analysis<sup>57</sup> but, after considering a petition to deny from Norman, determined that neither applicant in the group qualifies for a threshold preference.<sup>58</sup> The staff has thus referred the group to the Commission for a point system analysis. Norman claims that it qualifies for three points as an established local applicant. SCOCBI does not. Each of the applicants claims two points for diversity of ownership, but neither documented its claim. Accordingly, neither will receive points under this criterion. Neither claims points as a statewide network. With respect to technical parameters, SCOCBI’s proposed 60 dBu contour would encompass 550 square kilometers with a population of 17,957. Norman’s proposed 60 dBu contour would, using the lowest numbers provided by Norman, encompass 663 square kilometers with a population of 7,045. Neither applicant qualifies for any points under the best technical proposal criterion because neither proposal would serve an area and population at least 10 percent greater than the other. Accordingly, Norman is credited with a total of three points, and SCOCBI is not credited with any points.<sup>59</sup> Norman is the tentative selectee in Group 202.

48. **Group 203.** This group consists of the three applicants proposing to serve two different communities in Oregon. UCB USA, Inc. (“UCB”) proposes to serve Harbor. North Curry Families and Children’s Center (“NCFCC”) and Praise Temple Way of the Church of Christ (“Praise Temple”) each propose to serve Port Orford. Each applicant in this group claims eligibility for a fair distribution preference.<sup>60</sup> None asserts a preference for first NCE service alone, instead relying on both first and second NCE service population totals. UCB’s, NCFCC’s, and Praise Temple’s aggregated first and second NCE service to 3,363, 5,868, and 4,514 people, respectively are comparable. Accordingly, each will proceed to a point hearing.

49. NCFCC claims that it qualifies for three points as an established local applicant. UCB and Praise Temple do not. Each of the applicants claims two points for diversity of ownership. None

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<sup>57</sup> See *Threshold Fair Distribution Analysis of 32 Groups of Mutually Exclusive Applications*, 23 FCC Rcd 10213, 10219 (2008).

<sup>58</sup> See *Alan Korn, Esq.*, Letter, 24 FCC Rcd 12948 (MB 2009). SCOCBI was the only applicant in this group to claim that it was eligible for a fair distribution preference. Norman subsequently demonstrated that SCOCBI’s analysis erroneously omitted the contour of unbuilt NCE station KFXU, Chickasha, Oklahoma. Norman calculated SCOCBI’s aggregated first and second NCE service at 55 people or 0.3 percent of the population, and SCOCBI did not contest this showing. Thus, SCOCBI would not provide an aggregated first and second NCE FM service to at least 2,000 people and 10 percent of the population within the station’s 60 dBu contour. A third applicant – Edwards Broadcasting (“Edwards”) – was originally part of Group 202. Edwards’ application was dismissed in 2008 after the staff’s original decision, and Edwards did not seek consideration. See *Broadcast Actions*, Public Notice, Rep. No. 46809 (Aug. 27, 2008).

<sup>59</sup> Had the Commission accepted SCOCBI’s claims of two diversity points, Norman nevertheless would have prevailed because Norman’s total of three credited points would exceed SCOCBI’s claimed two-point total.

<sup>60</sup> See UCB, NCFCC, and Praise Temple Applications, Questions III(1), III(2), and associated exhibits. UCB’s, NCFCC’s, and Praise Temple’s 60 dBu contours respectively encompass 12,737 people, 5,953 people, and 15,814 people. Each would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

claims points as a statewide network. With respect to technical parameters, UCB's proposed 60 dBu contour would encompass 161 square kilometers with a population of 12,737. NCFCC's proposed 60 dBu contour would encompass 638 square kilometers with a population of 5,953. Praise Temple's proposed 60 dBu contour would encompass 9,749 square kilometers with a population of 15,814. Praise Temple qualifies for one point under the best technical proposal criterion because its proposal would serve at least 10 percent more area and population than the next best area of NCFCC's proposal and the next best population of UCB's proposal. Accordingly, UCB is credited with a total of two points, NCFCC is credited with a total of five points, and Praise Temple is credited with a total of three points. NCFCC is the tentative selectee in Group 203.

50. **Group 209.** This group consists of the mutually exclusive applications of UCB USA, Inc. ("UCB") and Clean Air Broadcasting Corp. ("Clean Air"). Each applicant proposes to serve the community of Coos Bay, Oregon. Neither applicant claims any points as an established local applicant. UCB and Clean Air each claim two points for diversity of ownership. Neither applicant claims points as a statewide network. With respect to technical parameters, UCB's proposed 60 dBu contour would encompass 228 square kilometers with a population of 34,280. Clean Air's proposed 60 dBu contour would encompass 383 square kilometers with a population of 34,290. Neither applicant qualifies as the best technical proposal because neither proposes to serve at least ten percent more area and population than the other. Accordingly, UCB and Clean Air are credited with a total of two points each, and will proceed to a tie-breaker.

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. UCB certifies that it has attributable interests in seven radio authorizations. Clean Air certifies that it does not have an attributable interest in any radio authorization. Clean Air therefore prevails based on this first tie-breaker criterion and is the tentative selectee in Group 209.

52. **Group 210.** This group consists of the mutually exclusive applications of Portland Radio Authority ("PRA") and Umpqua Christian Radio ("UCR") to serve different communities in Oregon. PRA proposes to serve Glendale. UCR proposes to serve Milo-Tiller. Neither claims that it would be eligible for a fair distribution preference. Thus, the applicants will proceed to a point hearing.

53. UCR claims three points as an established local applicant. PRA does not. Each claims two points for diversity of ownership, with UCR's claim based on a pledge to divest LPFM station KUMP-LP, Days Creek, Oregon and an associated waiver request. In accordance with the waiver policy set forth above, we hereby waive attribution of UCR's LPFM station for purposes of this points hearing. However, because UCR does not demonstrate that its governing documents would preclude it from obtaining additional attributable interests after divestiture of the LPFM station, UCR is not eligible for diversity points. Neither applicant claims points as a statewide network. With respect to technical parameters, PRA's proposed 60 dBu contour would encompass 1,096 square kilometers with a population of 4,417. UCR's proposed 60 dBu contour would encompass 1,312 square kilometers with a population of 1,620. Neither applicant qualifies as the best technical proposal because neither proposes to serve at least ten percent more area and population than the other. Accordingly, PRA is credited with a total of two points, and UCR is credited with a total of three points. UCR is the tentative selectee in Group 210.

54. **Group 211.** This group consists of the mutually exclusive applications of Western Oregon Opry, Ltd ("WOO") and Athens Christian Radio, Inc. ("ACR"). WOO proposes to serve Cottage Grove, Oregon. ACR proposes to serve Lowell, Oregon. Neither applicant claims that it would be eligible for a fair distribution preference. Thus, the applicants will proceed to a point hearing.

55. WOO claims three points as an established local entity. ACR certifies that it is not entitled to any points as an established local applicant. WOO claims two points for diversity of ownership. ACR does not. Neither applicant claims statewide network points. With respect to technical



parameters, WOO's proposed 60 dBu contour would encompass 264 square kilometers with a population of 14,176. ACR's proposed 60 dBu contour would encompass 970 square kilometers with a population of 8,045. Neither applicant qualifies as the best technical proposal because neither proposes to serve at least ten percent more area and population than the other. Accordingly, WOO is credited with a total of five points and ACR is not credited with any points. WOO is the tentative selectee in Group 211.

56. **Group 218.** This group consists of three applications to serve two different communities in Puerto Rico. Ministerio Educativo Marcos 16:15 ("MEM") and Hispanic Broadcast System, Inc. ("HBS") each propose to serve Culebra. Committee for the Rescue and Development of Vieques, Inc. ("CRD") would serve Vieques. Each applicant concedes that it would not be eligible for a fair distribution preference. Thus, all must proceed to a point hearing.

57. CRD claims three points as an established local applicant. MEM and HBS do not. Each applicant in this group claims two points for diversity of ownership. No applicant claims points as a statewide network. With respect to technical parameters, MEM states that its proposed 60 dBu contour would encompass 478 square kilometers with a population of 1,868 people. However, it appears that MEM erroneously included unpopulated areas over water in its area calculations. HBS's proposed 60 dBu contour would encompass 52 square kilometers with a population of 4,209 people. CRD's proposed 60 dBu contour would encompass 51 square kilometers with a population of 5,682 people. No applicant qualifies as the best technical proposal because none proposes to serve an area and population at least ten percent greater than the next best proposal. Accordingly, MEM and HBS are credited with a total of two points each. CRD is credited with a total of five points. Thus, CRD is the tentative selectee in Group 218.

58. **Group 219.** This group consists of the mutually exclusive applications of Family Educational Association, Inc. ("FEA") and Hispanic Broadcast System, Inc. ("HBS"). Each applicant proposes to serve the community of Guayanilla, Puerto Rico. Neither applicant claims any points as an established local applicant. FEA and HBS claim two points each for diversity of ownership. Neither applicant claims points as a statewide network. With respect to technical parameters, FEA's proposed 60 dBu contour would encompass 126 square kilometers with a population of 29,797. HBS's proposed 60 dBu contour would encompass 143 square kilometers with a population of 73,504. HBS qualifies for one point under the best technical proposal criterion because its proposal would serve at least 10 percent more area and population than FEA's proposal. Accordingly, FEA is credited with a total of two points, and HBS is credited with a total of three points. HBS is thus the tentative selectee in Group 219.

59. **Group 220.** This group consists of the mutually exclusive applications of Family Education Association, Inc. ("FEA") and Hispanic Broadcast System, Inc. ("HBS"). FEA proposes to serve Isabella, Puerto Rico. HBS proposes to serve Quebadillas, Puerto Rico. Neither applicant claims that it would be eligible for a fair distribution preference. Thus, both applicants will proceed to a point hearing.

60. HBS claims three points as an established local applicant. FEA does not. FEA and HBS each claims two points for diversity of ownership. Neither applicant claims points as a statewide network. With respect to technical parameters, FEA's proposed 60 dBu contour would encompass 165 square kilometers with a population of 77,984. HBS's proposed 60 dBu contour would encompass 189 square kilometers with a population of 95,156. HBS qualifies for one point under the best technical proposal criterion because its proposal would serve at least 10 percent more area and population than FEA's proposal. Accordingly, FEA is credited with a total of two points, and HBS is credited with a total of six points. HBS is thus the tentative selectee in Group 220.

61. **Group 233.** This group consists of the mutually exclusive applications of Laredo Stepping Stones ("LSS") and Iglesia Jesucristo Es Mi Refugio, Inc. ("IJMR"). Each applicant proposes to serve the community of Encinal, Texas. IJMR claims 3 points as an established local applicant. However, it provides no support for its claim and, therefore will not be credited with any points under this



criterion. LSS certifies that it is not entitled to any points under this criterion. IJMR claims two points for diversity of ownership. LSS does not. Neither applicant claims points as a statewide network. With respect to technical parameters, LSS's proposed 60 dBu contour would encompass 3,743 square kilometers with a population of 1,077. IJMR's proposed 60 dBu contour would encompass 428 square kilometers with a population of 840. LSS qualifies for two points under the best technical proposal criterion because its proposal would serve at least 25 percent more area and population than IJMR's proposal. Accordingly, LSS and IJMR are credited with a total of two points each and will proceed to a tie-breaker.

62. 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. LSS certifies that it has an attributable interest in one radio authorization. IJMR certifies that it does not have an attributable interest in any radio authorization. IJMR therefore prevails based on this first tie-breaker criterion and is the tentative selectee in Group 233.

63. **Group 234.** This group consists of four mutually exclusive applications to serve three communities in Texas. Centro Cristiano de Vida Eterna ("CCVE") has two applications in the group, one for Conroe and the other for Laurel Hill. Community Radio, Inc. ("CRI") and KXVI Communications ("KXVI") each propose to serve New Waverly. None of the applicants in the present group claims that it would be eligible for a fair distribution preference. Thus, each will proceed to a point hearing.

64. None of the applicants claims points as an established local applicant. All claim two points for diversity of ownership. No applicant claims points as a statewide network. With respect to technical parameters, the proposed 60 dBu contour of CCVE's Conroe proposal would encompass 117 square kilometers with a population of 2,600. CCVE's proposed 60 dBu contour for Laurel Hill would encompass 359 square kilometers with a population of 3,357. CRI's proposed 60 dBu contour would encompass 1,255 square kilometers with a population of 21,968, using the lowest numbers provided by CRI. KXVI's proposed 60 dBu contour would encompass 1,870 square kilometers with a population of 33,506. KXVI qualifies for two points under the best technical proposal criterion because its proposal would serve at least 25 percent more area and population than CRI's next best proposal. Accordingly, KXVI is credited with a total of four points. The respective point total for CCVE-Conroe, CCVE-Laurel Hill, and CRI is two. KXVI is thus the tentative selectee in Group 234.

65. **Group 235.** This group consists of three mutually exclusive applications to serve communities in Texas. Radio Bilingue, Inc. ("RBI") and Christian Ministries of the Valley, Inc ("CMV") each propose to serve Eagle Pass. Iglesia Jesucristo es Mi Refugio, Inc. ("IJMR") proposes to serve Quemado. RBI, the only applicant in this group to claim that it would be eligible for a fair distribution preference, contends that it would provide a new second NCE FM service.<sup>61</sup> However, RBI's claim is erroneous because it failed to consider the outstanding construction permit for a new station in Del Rio, Texas (File No. BPED-19970513MB), which would provide a second service to the same area claimed by RBI. Therefore, no applicant in this group is eligible for a fair distribution preference and each will proceed to a point hearing.

66. No applicant in this group claims that it qualifies for points as an established local applicant. Each claims two points for diversity of ownership. RBI states that it "is amending" its governing documents to include a diversity provision but provides no supporting documentation that a

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<sup>61</sup> RBI's 60 dBu contour encompasses 40,331 people. RBI's claimed new first and second NCE service is 4,248 people, all of which is second service. Thus, RBI argues that it would provide a new first or second NCE service to at least 2,000 people and ten percent of the population.

timely amendment occurred. Accordingly, we will not award points to RBI under this criterion.<sup>62</sup> None of the applicants claim points as a statewide network. With respect to technical parameters, RBI's proposed 60 dBu contour would encompass 414 square kilometers with a population of 40,331. CMV's proposed 60 dBu contour would encompass 503 square kilometers with a population of 40,517. IJMR's proposed 60 dBu contour would encompass 351 square kilometers with a population of 1,035. No applicant in this group qualifies for points under the best technical proposal criterion because CMV, the applicant serving the largest area and population, would not serve at least 10 percent more area and population than RBI, the applicant with the next best technical proposal. Accordingly, CMV and IJMR are credited with a total of two points each, and RBI is not credited with any points. RBI is eliminated. CMV and IJMR proceed to a tie-breaker.

67. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. CMV certifies that it has attributable interests in two radio authorizations. IJMR certifies that it does not have an attributable interest in any radio authorization. IJMR therefore prevails based on this first tie-breaker criterion and is the tentative selectee in Group 235.

68. **Group 236.** This group consists of the mutually exclusive applications of Radio Bilingue, Inc. ("RBI") and Iglesia Jesucristo es Mi Refugio de San Antonio ("IJMRS"). Each applicant proposes to serve the community of Zapata, Texas. Neither applicant claims that it qualifies for points as an established local applicant. Each claims two points for diversity of ownership. RBI states that it "is amending" its governing documents to include a diversity provision but provides no supporting documentation that a timely amendment occurred. Accordingly, we will not award points to RBI under this criterion. Neither applicant claims points as a statewide network. With respect to technical parameters, RBI's proposed 60 dBu contour would encompass 571 square kilometers with a population of 10,426. IJMRS's proposed 60 dBu contour would encompass 166 square kilometers with a population of 10,325. Neither applicant qualifies for points as the best technical proposal because neither proposes to serve at least ten percent more area and population than the other. Accordingly, IJMRS is credited with a total of two points and RBI is not credited with any points.<sup>63</sup> IJMRS is the tentative selectee in Group 236.

69. **Group 237.** The three applicants in this group propose service to two different communities in Texas. Texas Public Radio ("TPR") and Christian Ministries of the Valley ("CMV") each propose to serve Del Rio. Iglesia Jesucristo es Mi Refugio, Inc. ("IJMR") proposes to serve Johnstone. TPR and CMV each claim eligibility for a fair distribution preference.<sup>64</sup> IJMR does not. Accordingly, IJMR is eliminated. The fair distribution analysis ends because the remaining two applicants, TPR and CMV propose to serve the same community. TPR and CMV will proceed to a point hearing.

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<sup>62</sup> Had the Commission accepted RBI's claim of two diversity points and allowed it to proceed to a tie-breaker, RBI nevertheless would not have prevailed because RBI's attributable interest in six radio authorizations exceeds the interests of others in the group.

<sup>63</sup> Had the Commission accepted RBI's claim of two diversity points, RBI nevertheless would not have prevailed in a tiebreaker because RBI's attributable interest in six radio authorizations exceeds the interests of IJMRS.

<sup>64</sup> See TPR and CMV Applications, Questions III(1), III(2), and associated exhibits. TPR's 60 dBu contour encompasses 44,906 people, and its claimed aggregated first and second NCE service is all 44,906 people. CMV's 60 dBu contour encompasses 44,290 people, and its claimed aggregated first and second NCE service is 30,850 people. Thus, each would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

70. Neither TPR nor CMV claims any points as an established local applicant. TPR and CMV each claim two points for diversity of ownership. Neither applicant claims points as a statewide network. With respect to technical parameters, TPR's proposed 60 dBu contour would encompass 1,852 square kilometers with a population of 44,902. CMV's proposed 60 dBu contour would encompass 1,761 square kilometers with a population of 44,290. Neither applicant qualifies for points as the best technical proposal because neither proposes to serve at least ten percent more area and population than the other. Accordingly, TPR and CMV are credited with a total of two points each. TPR and CMV will proceed to a tie-breaker.

71. 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. TPR certifies that it has attributable interests in three radio authorizations. CMV certifies that it has attributable interests in two radio authorizations. Therefore, CMV prevails based on this first tie-breaker and is the tentative selectee in Group 237.

72. **Group 245.** This group consists of the mutually exclusive applications of Templo Piedra Angular ("TPA"), New Wine Church of San Antonio ("New Wine"), and Grow Biz, Inc. ("GBI"). Each applicant proposes to serve Andrews, Texas. None of the applicants in this group claims to be eligible for points as an established local applicant. All three applicants claim two points each for diversity of ownership. New Wine provides no documentation of its diversity claim. Accordingly, New Wine does not qualify for points based on diversity of ownership. None of the applicants in this group claims points as a statewide network. With respect to technical parameters, TPA's proposed 60 dBu contour would encompass 209 square kilometers with a population of 11,737. New Wine's proposed 60 dBu contour would encompass 463 square kilometers with a population of 12,545. GBI's proposed 60 dBu contour would encompass 193 square kilometers with a population of 11,522. No applicant in this group qualifies for points under the best technical proposal criterion because New Wine's proposal to reach the largest area and population would not serve at least ten percent more area and population than TPA's next best proposal. Accordingly, New Wine is not credited with any points, and TPA and GBI are credited with a total of two points each. New Wine is eliminated. TPA and GBI will proceed to a tie-breaker.

73. 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. TPA certifies that it has no attributable interests in any radio authorization. GBI certifies that it has an attributable interest in one radio authorization. TPA therefore prevails based on this first tie-breaker and is the tentative selectee in Group 245.

74. **Group 252.** The four mutually exclusive applicants in this group propose service to three different communities. Positive Alternative Radio, Inc. ("PAR") and Delmarva Education Association ("DEA") each propose to serve Danville, Virginia. Pensacola Christian College, Inc. ("College") proposes to serve Glenwood, Virginia. Educational Information Corp. ("EIC") proposes to serve Milton, North Carolina.

75. Each of the applicants in this group claim to be eligible for a fair distribution preference.<sup>65</sup> Each applicant states that it is not eligible for a preference based on new first NCE service. Accordingly, we will examine aggregated new first and second NCE service. PAR claims to provide aggregated first and second service to 43,748 people; DEA to 49,142 people; College to 61,405 people; and EIC to 47,712 people. However, College's claim to provide a new second NCE service to the entire

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<sup>65</sup> See PAR, DEA, College, and EIC Applications, Questions III(1), III(2), and associated exhibits. PAR's 60 dBu contour encompasses 71,411 people. DEA's 60 dBu contour encompasses 69,791 people. College's 60 dBu contour encompasses 61,405 people. EIC's 60 dBu contour encompasses 73,875 people. Each would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

population within its 60 dBU contour is erroneous because it failed to consider the authorized service of WRVL, WUNC, and WVTF. College's second service is comparable to that of the other three applicants in this group. Accordingly, no applicant in this group is entitled to a decisive fair distribution preference. Each will be considered in a point hearing.

76. None of the applicants in this group claims any points as an established local applicant. DEA, College and EIC, but not PAR, claim two points for diversity of ownership. EIC's claim is based on a pledge to return for cancellation its authorization for FM translator station W275AW, Danville, Virginia. DEA, College and EIC will receive two points under this criterion. None of the applicants in this group claims points as a statewide network. With respect to technical parameters, PAR's proposed 60 dBU contour would encompass 589 square kilometers with a population of 71,411. DEA's proposed 60 dBU contour would encompass 656 square kilometers with a population of 69,791. College's proposed 60 dBU contour would encompass 339 square kilometers with a population of 61,405. EIC's proposed 60 dBU contour would encompass 699 square kilometers with a population of 73,875. No applicant in this group qualifies for points under the best technical proposal criterion because EIC's proposal to reach the largest area and population would not exceed by at least ten percent DEA's next best area and PAR's next best population. Accordingly, DEA, College and EIC are credited with a total of two points each and PAR is not credited with any points. PAR is eliminated. DEA, College and EIC will proceed to a tie-breaker.

77. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. DEA certifies that it has attributable interests in 121 radio authorizations. College certifies that it has attributable interests in 46 radio authorizations. EIC certifies that it has attributable interests in 11 radio authorizations. EIC therefore prevails based on this first tie-breaker and is the tentative selectee in Group 252.

78. **Group 253.** The three applicants in Group 253 would serve two different Virginia communities. Liberty University, Inc. ("Liberty") proposes to serve Bufflick. Educational Media Corp. ("EMC") and Holy Family Communications ("HFC") would each serve Winchester. HFC claims that it is eligible for a fair distribution preference.<sup>66</sup> However, HFC's claim was plotted using an incorrect site and it contends, for purposes of fair distribution, to cover areas that do not agree with HFC's own city coverage plot. Thus, HFC's fair distribution claim is patently defective and not entitled to a preference. Liberty and EMC do not claim a fair distribution preference. Liberty, EMC, and HFC will, therefore, proceed to a point hearing.

79. Liberty, EMC, and HFC do not claim any points as an established local applicant. Each claims two points for diversity of ownership. No applicant claims points as a statewide network. With respect to technical parameters, Liberty's proposed 60 dBU contour would encompass 97 square kilometers with a population of 8,121. EMC's proposed 60 dBU contour would encompass 89 square kilometers with a population of 36,312. HFC's proposed 60 dBU contour would encompass 157 square kilometers with a population of 36,322. No applicant qualifies for points under the best technical proposal criterion because no applicant proposes to serve an area and population at least ten percent greater than the next best proposal. Accordingly, Liberty, EMC, and HFC are credited with a total of two points each and will proceed to a tie-breaker.

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<sup>66</sup> See HFC Application, Questions III(1), III(2), and associated exhibits. HFC's proposed 60 dBU contour encompasses 36,322 people. HFC's claimed aggregated first and second new NCE service is 14,414 people. Thus, it claims that it would provide combined first and second NCE service to ten percent of the population within its 60 dBU contour and to more than 2,000 people.



80. 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. Liberty certifies that it has attributable interests in 34 radio authorizations. EMC certifies that it has attributable interests in two radio authorizations. HFC certifies that it does not have an attributable interest in any radio authorization. HFC therefore prevails based on the first tie-breaker and is the tentative selectee in Group 253.

81. **Group 255.** This group consists of the mutually exclusive applications of Spokane Public Radio, Inc. (“SPR”) and St’al-Squil-Xw (“SSX”) for different communities in Washington. SPR proposes to serve Colville. SSX proposes to serve Kettle Falls. SPR and SSX each claim eligibility for a fair distribution preference based on provision of first NCE service to the entire population within each applicant’s proposed 60 dBu contour.<sup>67</sup> The respective populations of 16,982 and 15,823 are comparable. Therefore, SPR and SSX must proceed to a point hearing.

82. SSX claims three points as an established local applicant. SPR certifies that it is not entitled to any points under this criterion. Each claims two points for diversity of ownership. SSX provides no support for its diversity claim. Accordingly SPR, but not SSX, will receive two points for local diversity of ownership. Neither applicant claims points as a statewide network. With respect to technical parameters, SPR’s proposed 60 dBu contour would encompass 1,822 square kilometers with a population of 16,982. SSX’s proposed 60 dBu contour would encompass 1,231 square kilometers with a population of 15,823. Neither applicant qualifies for points as the best technical proposal because neither proposes to serve at least ten percent more area and population than the other. Accordingly, SPR is credited with a total of two points and SSX is credited with a total of three points. Thus, SSX is the tentative selectee in Group 255.

83. **Group 256.** This group consists of the mutually exclusive applications of Iglesia Jesucristo Es Mi Refugio de Austin (“IJMRA”) and Alpha & Omega Broadcasting (“AOB”) to serve different communities in Washington. IJMRA proposes to serve Getchell. AOB proposes to serve Granite Falls. IJMRA and AOB each states that it would not be eligible for a fair distribution preference. Therefore, each must proceed to a point hearing.

84. AOB claims three points as an established local applicant. However, information submitted in support of its claim indicates that AOB was formed as a Washington corporation on April 13, 2006, less than two years before the filing of its October 2007 application. Accordingly, AOB cannot satisfy the “established” portion of this criterion and will not be credited with any points.<sup>68</sup> IJMRA does not claim any points under this criterion. AOB and IJMRA claim two points each for diversity of ownership. Neither AOB nor IJMR claims points as a statewide network. With respect to technical parameters, IJMRA’s proposed 60 dBu contour would encompass 140 square kilometers with a population of 54,307. AOB’s proposed 60 dBu contour would encompass 528 square kilometers with a population of 78,798. AOB qualifies for two points as the best technical proposal because it proposes to serve at least 25 percent more area and population than IJMRA. Accordingly, IJMRA has been credited with a total of two points, and AOB has been credited with a total of four points. AOB is the tentative selectee in Group 256.

85. **Group 260.** This group consists of the mutually exclusive applications of State of Wisconsin – Educational Communications Board (“Wisconsin”) and Rhinelander Seventh-Day Adventist

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<sup>67</sup> See SPR and SSX Applications, Questions III(1), III(2), and associated exhibits. SPR’s proposed 60 dBu contour encompasses 16,982 people. SSX’s proposed 60 dBu contour encompasses 15,823 people.

<sup>68</sup> See *NCE Reconsideration Order*, 17 FCC Rcd at 13138 (a new organization formed by a board of long-time local residents does not meet the “established” prong of the established local applicant criterion).



Church (“RSDAC”). Each proposes to serve Rhinelander, Wisconsin. Wisconsin and RSDAC each claim that they are entitled to three points as established local applicants. RSDAC asserts that it is entitled to two points for diversity of ownership. RSDAC, however, provides no support for its diversity claim. Wisconsin does not claim any points under this criterion. Accordingly neither applicant will receive any points for local diversity of ownership. Wisconsin claims, and will be awarded, two points as a statewide network. RSDAC certifies that it is not eligible for any points under this criterion. With respect to technical parameters, Wisconsin’s proposed 60 dBu contour would encompass 4,082 square kilometers with a population of 52,005. RSDAC’s proposed 60 dBu contour would, using the lowest numbers provided, encompass 4,165 square kilometers with a population of 52,767. Neither applicant qualifies for points as the best technical proposal because neither proposes to serve at least ten percent more area and population than the other. Accordingly, Wisconsin is credited with a total of five points and RSDAC is credited with a total of three points. Wisconsin is the tentative selectee in Group 260.

86. **Group 263.** This group consists of the mutually exclusive applications of Western Wyoming Community College (“WWCC”) and Hi-Line Radio Fellowship, Inc. (“Hi-Line”). Each proposes to serve Rock Springs, Wyoming. WWCC claims three points as an established local applicant. Hi-Line certifies that it is not entitled to any points under this criterion. WWCC claims two points for diversity of ownership. However, WWCC does not document its diversity claim and therefore will not be credited with points under this criterion. Hi-Line certifies that it is not entitled to any points under this criterion. Neither applicant claims to be eligible for points as a statewide network. With respect to technical parameters, WWCC’s proposed 60 dBu contour would encompass 180 square kilometers with a population of 22,365. Hi-Line’s proposed 60 dBu contour would encompass 5,046 square kilometers with a population of 35,851. Hi-Line qualifies for two points under the best technical proposal criterion because it would serve at least 25 percent more area and population than WWCC. Accordingly, WWCC is credited with a total of three points and Hi-Line is credited with a total of two points. WWCC is the tentative selectee in Group 263.

#### IV. NEXT STEPS

87. **Acceptability Studies and Filing of Petitions.** The staff has examined the applications of each tentative selectee for application defects.<sup>69</sup> Each tentative selectee identified in this Order and its Appendix appears to be fully qualified to become the licensee of the new or modified NCE FM stations it has proposed. We tentatively conclude that the grant of their applications would serve the public interest, convenience and necessity. Accordingly, the tentative selectees are accepted for filing. This triggers a 30-day period for the filing of petitions to deny.

88. Any argument that the tentatively selected application should not be granted should be raised in such a petition, even if the objection relates only indirectly to the tentative selectee’s qualifications. For example, an applicant that concedes that the tentative selectee is qualified for the points received but believes its own proposal should have received a greater number of points than the tentative selectee’s would make its argument in a petition to deny. Parties should not raise such matters as petitions for reconsideration of the instant Order because the point hearings herein take no final action on any application, and petitions for reconsideration do not lie against such interlocutory decisions.<sup>70</sup>

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<sup>69</sup> If a tentative selectee’s application is found unacceptable for filing, it is returned. The applicant is then given one opportunity to submit a curative amendment. See 47 C.F.R. § 73.3522(b)(2). A tentative selectee that is unable to cure the defect with a minor amendment is disqualified, and the applicant with the next highest point tally becomes the new tentative selectee. See 47 C.F.R. § 73.7004(d).

<sup>70</sup> See *id.* § 1.106 (a) (1). See also *Patrick J. Vaughn, Esq.*, Letter, 22 FCC Rcd 11165 (MB 2007).

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

90. With the exception of issues that are novel or require Commission or Administrative Law Judge consideration by law, the staff shall act on the tentatively selected applications pursuant to delegated authority. We delegate to the staff authority to act on any routine matter that may be raised, including whether the applicant is eligible, as certified, for the points awarded herein, and whether the application complies with all relevant Commission rules and policies.<sup>71</sup> The staff need not refer such matters to the Commission or Administrative Law Judge unless the staff determines that the issues are new or novel, or raise a substantial and material question regarding the award of points. Generally, the staff should refer only those issues to the Commission where the exclusion or inclusion of challenged or claimed points could alter the outcome in the particular NCE group, or where a new or novel question or substantial and material question of fact otherwise exists.<sup>72</sup> In such cases, the staff would either designate the application for hearing on the substantial and material question or refer the mutually exclusive group to the Commission for resolution of the novel issue and/or the determination of a successor tentative selectee.

91. **Severance for Purposes of Petitions, Appeals and Finality.** We are including a provision in the ordering clauses herein that each decision involving a mutually exclusive group is to be considered distinct and separate for purposes of petitions to deny, petitions for reconsideration, review on the Commission's own motion, and appeals. The timing of any action disposing of a petition or appeal affecting a particular group will not delay the finality of our decision with respect to any other group.

## V. ORDERING CLAUSES

92. Accordingly, IT IS ORDERED, That each decision involving a mutually exclusive group in this *Memorandum Opinion and Order* shall be deemed a distinct and separate decision for purposes of petitions to deny, petitions for reconsideration, review on the Commission's own motion, and appeals.<sup>73</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.

93. **Group 51.** Accordingly, IT IS ORDERED, That Defuniak Springs Seventh-Day Adventist Church is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Defuniak Springs, Florida and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's

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<sup>71</sup> See, e.g., *Central Florida Educational Foundation, Inc.*, Letter, 23 FCC Rcd 1695 (MB 2008) (permitting staff dismissal of defective application tentatively selected in a point hearing, and staff award of permit on a non-comparative basis to only remaining acceptable applicant).

<sup>72</sup> See generally *NCE Omnibus*, 22 FCC Rcd at 6162 n.230 (2007) (standards for staff evaluation of petitions).

<sup>73</sup> See 5 U.S.C. §§ 702, 704, 706; 47 U.S.C. §§ 309(d), 402(b), 405; 47 C.F.R. §§ 1.106-08, 1.120, 73.7004. In cases that involve separate mutually exclusive groups but present common issues, the petitions or appeals may be filed jointly or may be consolidated at the discretion of the Commission or a reviewing court. See, e.g., FED. R. APP. P. 3(b).

application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Calvary Fellowship, Inc. (File No. BNPED-20071022AGL), Joshua Springs Calvary Chapel (File No. BNPED-20071022BFR), and TBTA Ministries (File No. BNPED-20071015ADJ), and TO GRANT the application of Defuniak Springs Seventh-Day Adventist Church (File No. BNPED-20071022BMF) CONDITIONED UPON compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

94. **Group 57.** Accordingly, IT IS ORDERED, That Neighborhoods United for a Better Alachua and Westside Baptist Church of Gainesville are TENTATIVELY SELECTED to be awarded construction permits ON A TIMESHARING BASIS for new NCE FM stations in High Springs, Florida. The two applications ARE ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentatively selected applications, we direct the staff to provide the applicants ninety (90) days in which to reach a timesharing agreement among themselves and, upon execution of an acceptable agreement within this time period, TO GRANT the applications of Neighborhoods United for a Better Alachua (File No. BNPED-20071019AQU) and Westside Baptist Church of Gainesville (File No. BNPED-20071019AUY) CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system. If the applicants are unable to reach a voluntary timesharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate timesharing arrangement.

95. **Group 123.** Accordingly, IT IS ORDERED, That the Application for Review filed by Smile FM concerning dismissal of its application (File No. BNPED-20071019ANK) IS DENIED.

96. IT IS FURTHER ORDERED, That Vineyard Academy is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Vicksburg, Michigan and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Family First Radio (File No. BNPED-20071019AYT), and TO GRANT the application of Vineyard Academy (File No. BNPED-20071022AYR) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and which also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for period of four years of on-air operations.

97. **Group 172.** Accordingly, IT IS ORDERED, That Seacoast Arts and Cultural Alliance is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Dover, New Hampshire and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Granite State Educational Fellowship (File No. BNPED-20071019AXF) and TO GRANT the application of Seacoast Arts and Cultural Alliance (File No. BNPED-20071022BCU) CONDITIONED UPON compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system PROVIDED THAT, pursuant to a waiver 47 C.F.R. § 73.860(a), Seacoast Arts and Cultural Alliance must divest or surrender its license for LPFM station WSCA-LP, Portsmouth, New Hampshire prior to commencement of program tests of the full service NCE FM station.

98. **Group 176.** Accordingly, IT IS ORDERED, That New Mexico Highlands University Foundation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Romeroville, New Mexico and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Abundant Life Broadcasting (File No. BNPED-20071012DYH) and TO GRANT the application of New Mexico Highlands University Foundation (File No. BNPED-20071019AAC) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

99. **Group 177.** Accordingly, IT IS ORDERED, That Regents of New Mexico Highlands University is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Clayton, New Mexico and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of American Family Association (BNPED-20071012DYL) and La Promesa Foundation (File No. BNPED-20071019AEB) and TO GRANT the application of Regents of New Mexico Highlands University (File No. BNPED-20071019ABB) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

100. **Group 178.** Accordingly, IT IS ORDERED, That Regents of New Mexico Highlands University is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Raton, New Mexico and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of American Family Association (BNPED-20071015DMO) and TO GRANT the application of Regents of New Mexico Highlands University (File No. BNPED-20071019AAN) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

101. **Group 179.** Accordingly, IT IS ORDERED, That Regents of New Mexico State University is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Silver City, New Mexico and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Community Access Television of Silver City (BNPED-20071016AEL) and TO GRANT the application of Regents of New Mexico State University (File No. BNPED-20071019AUK) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

102. **Group 180.** Accordingly, IT IS ORDERED, That One Ministries, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Truth or Consequences, New Mexico and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Regents of New Mexico State University (BNPED-20071019ATS) and TO GRANT the application of One Ministries, Inc. (File No. BNPED-20071017AIG) CONDITIONED UPON that selectee's



compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system PROVIDED THAT, pursuant to a waiver 47 C.F.R. § 73.860(a), One Ministries, Inc. must divest or surrender its license for LPFM station KQSL-LP, Penngrove, California prior to commencement of program tests of the full service NCE FM station..

103. **Group 184.** Accordingly, IT IS ORDERED, That Centro Cristiano Vida Abundante is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Jessup, Nevada and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Living Proof, Inc. (File No. BNPED-20071018AJP) and TO GRANT the application of Centro Cristiano Vida Abundante (File No. BNPED-20071018ABI) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

104. **Group 188.** Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed by Eastern U.S. Taiwan Culture Promotion Association, Inc. concerning the dismissal of its application (File No. BNPED-20071017ADH) IS DENIED.

105. IT IS FURTHER ORDERED, That B. Stephen Demchuk Foundation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Glen Spey, New York and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Northeastern Pennsylvania Educational Television Association (File No. BNPED-20071022ARU) and TO GRANT the application of B. Stephen Demchuk Foundation (File No. BNPED-20071019ARI) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

106. **Group 200.** Accordingly, IT IS ORDERED, That New Life Mission is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Loyal, Oklahoma and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Iglesia Jesucristo Es Mi Refugio de Austin (File No. BNPED-20071022ACN) and TO GRANT the application of New Life Mission (File No. BNPED-20071017AED) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

107. **Group 202.** Accordingly, IT IS ORDERED, That Norman Unitarian Universalist Fellowship is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Dibble, Oklahoma and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of South Central Oklahoma Christian Broadcasting, Inc. (File No. BNPED-20071019AIW), and TO GRANT the application of Norman Unitarian Universalist Fellowship (File No. BNPED-20071019ASV), CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47

C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

108. **Group 203.** Accordingly, IT IS ORDERED, That North Curry Families and Children's Center is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Port Orford, Oregon and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of UCB USA, Inc. (File No. BNPED-20071018APS) and Praise Temple Way of the Church of Christ (File No. BNPED-20071022BSS), and TO GRANT the application of North Curry Families and Children's Center (File No. BNPED-20071012AVD), CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

109. **Group 209.** Accordingly, IT IS ORDERED, That Clean Air Broadcasting Corp. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Coos Bay, Oregon and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of UCB USA, Inc. (File No. BNPED-20071018APY) and TO GRANT the application of Clean Air Broadcasting Corp. (BNPED-20071019AZK) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

110. **Group 210.** Accordingly, IT IS ORDERED, That Umpqua Christian Radio is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Milotiller, Oregon and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Portland Radio Authority (File No. BNPED-20071022AOM) and TO GRANT the application of Umpqua Christian Radio (BNPED-20071022AER) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system PROVIDED THAT pursuant to a waiver of Section 73.860(a) of the Commission's Rules, 47 C.F.R. § 73.860(a), Umpqua Christian Radio must divest or surrender its license for LPFM station KUMP-LP, Days Creek, Oregon prior to commencement of program tests of the full service NCE FM station.

111. **Group 211.** Accordingly, IT IS ORDERED, That Western Oregon Opry, Ltd. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Cottage Grove, Oregon and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Athens Christian Radio, Inc. (File No. BNPED-20071015ACQ) and TO GRANT the application of Western Oregon Opry, Ltd. (File No. BNPED-20071022AOI) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

112. **Group 218.** Accordingly, IT IS ORDERED, That Committee for the Rescue and Development of Vieques, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a

new NCE FM station in Vieques, Puerto Rico and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Ministerio Educativo Marcos 16:15 (File No. BNPED-20071018AOR) and Hispanic Broadcast System, Inc. (File No. BNPED-20071019ADC) and TO GRANT the application of Committee for the Rescue and Development of Vieques, Inc. (File No. BNPED-20071018AXU) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

113. **Group 219.** Accordingly, IT IS ORDERED, That Hispanic Broadcast System, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Guayanilla, Puerto Rico and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of the Family Educational Association (File No. BNPED-20071018BAU) and TO GRANT the application of Hispanic Broadcast System, Inc. (File No. BNPED-20071019ACZ) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

114. **Group 220.** Accordingly, IT IS ORDERED, That Hispanic Broadcast System, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Quebadillas, Puerto Rico and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Family Educational Association, Inc. (File No. BNPED-20071018BBG) and TO GRANT the application of Hispanic Broadcast System, Inc. (File No. BNPED-20071017DKW) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

115. **Group 233.** Accordingly, IT IS ORDERED, That Iglesia Jesucristo Es Mi Refugio, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Encinal, Texas and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of the Laredo Stepping Stone (File No. BNPED-20071015AFA) and TO GRANT the application of Iglesia Jesucristo Es Mi Refugio, Inc. (File No. BNPED-20071017AIF) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

116. **Group 234.** Accordingly, IT IS ORDERED, That KXVI Communications is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in New Waverly, Texas and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Community Radio, Inc. (File No. BNPED-20071015AJE), and Centro Cristiano de Vida Eterna (File Nos. BNPED-20071018ACA and -20071018ABX) and TO GRANT the application of KXVI Communications (File No. BNPED-20071018ANK) CONDITIONED UPON that selectee's compliance with Section 73.7005

of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

117. **Group 235.** Accordingly, IT IS ORDERED, That Iglesia Jesucristo Es Mi Refugio, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Quemado, Texas and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Radio Bilingue, Inc. (File No. BNPED-20071016AFA) and Christian Ministries of the Valley, Inc. (File No. BNPED-20071019ABE), and TO GRANT the application of Iglesia Jesucristo Es Mi Refugio, Inc. (File No. BNPED-20071017AIL) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

118. **Group 236.** Accordingly, IT IS ORDERED, That Iglesia Jesucristo Es Mi Refugio de San Antonio is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Zapata, Texas and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Radio Bilingue, Inc. (File No. BNPED-20071016AFC), and TO GRANT the application of Iglesia Jesucristo Es Mi Refugio de San Antonio (File No. BNPED-20071022AAW) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

119. **Group 237.** Accordingly, IT IS ORDERED, That Christian Ministries of the Valley, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Del Rio, Texas and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Texas Public Radio (File No. BNPED-20071016AIU) and Iglesia Jesucristo Es Mi Refugio, Inc. (File No. BNPED-20071017AIM), and TO GRANT the application of Christian Ministries of the Valley, Inc. (File No. BNPED-20071019ABT) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

120. **Group 245.** Accordingly, IT IS ORDERED, That Templo Piedra Angular is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Andrews, Texas and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of New Wine Church of San Antonio (BNPED-20071022ACL) and Grow Biz, Inc. (BNPED-20071022BJJ) and TO GRANT the application of Templo Piedra Angular (File No. BNPED-20071019BDV) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

121. **Group 252.** Accordingly, IT IS ORDERED, That Educational Information Corp. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Milton,



North Carolina and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Positive Alternative Radio, Inc. (File No. BNPED-20071015AHZ), Delmarva Education Association (File No. BNPED-20071022BBT), and Pensacola Christian College, Inc. (File No. BNPED-20071018DFJ), and TO GRANT the application of Educational Information Corp. (File No. BNPED-20071018AFS) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, PROVIDED THAT Educational Information Corp. must surrender its license for FM translator station W275AW, Danville, Virginia prior to commencement of program tests of the full service NCE FM station.

122. **Group 253.** Accordingly, IT IS ORDERED, That Holy Family Communications is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Winchester, Virginia and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Liberty University, Inc. (File No. BNPED-20071018ABV) and Educational Media Corp. (File No. BNPED-20071019AHN) and TO GRANT the application of Holy Family Communications (File No. BNPED-20071022AWO) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

123. **Group 255.** Accordingly, IT IS ORDERED, That St'al-Squil-Xw is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Kettle Falls, Washington and that its application is ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Spokane Public Radio, Inc. (File No. BNPED-20071019AEY) and TO GRANT the application of St'al-Squil-Xw (File No. BNPED-20071012ARV) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

124. **Group 256.** Accordingly, IT IS ORDERED, That Alpha and Omega Broadcasting is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Granite Falls, Washington and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Iglesia Jesucristo Es Mi Refugio de Austin (File No. BNPED-20071022ADC) and TO GRANT the application of Alpha and Omega Broadcasting (File No. BNPED-20071015ACS) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

125. **Group 260.** Accordingly, IT IS ORDERED, That State of Wisconsin Educational Communications Board is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Rhinelander, Wisconsin and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive

application of Rhinelander Seventh Day Adventist Church (File No. BNPED-20071019ADR), and TO GRANT the application of State of Wisconsin Educational Communications Board (File No. BNPED-20071018AWS) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

126. **Group 263.** Accordingly, IT IS ORDERED, That Western Wyoming Community College is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Rock Springs, Wyoming and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Hi-Line Radio Fellowship, Inc. (File No. BNPED-20071019BDQ), and TO GRANT the application of Western Wyoming Community College (File No. BNPED-20071018AGF) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX

### Noncommercial Educational Groups

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

2. An entry of “n/a” in the Appendix’s Section 307(b) column indicates that Section 307(b) principles are not applicable to that mutually exclusive application, typically because each of the applicants in the group proposed to serve the same community. We also use this “n/a” designation for defective submissions, which were eliminated from the group prior to our consideration of Section 307(b) factors. When applicants propose service to different communities, the Appendix identifies each applicant’s eligibility for Section 307(b) consideration with a “yes” or “no” entry.<sup>1</sup> Where applicable, the Appendix lists the population which each applicant claims would receive a new first service or aggregated first and second service. The Appendix includes population numbers only to the extent that such information is material to the analysis. For example, if no applicant in a group claimed a preference based on first service alone, the Appendix does not report specific first service data. If an applicant provided numbers but did not claim and/or qualify for a preference, the chart notes either “<10 %” or “<2,000,” to indicate that the number of people served was less than 10 percent of the population or fewer than 2,000 people. Such data would be included in the aggregated first and second service numbers, if the applicants claimed a preference on that basis. If an applicant is eliminated on the basis of a Section 307(b) analysis, that outcome is noted as “Elim on 307b” in the Appendix.

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

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

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

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

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