

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

In the Matter of )
)
Comparative Consideration of 26 Groups of ) NCE MX Group Numbers 399, 401, 403,
Mutually Exclusive Applications ) 406, 408, 409, 410, 412, 413, 414, 416, 417,
for Permits to Construct New or Modified ) 418, 421, 423, 426, 428, 430, 431, 437, 440,
Noncommercial Educational FM Stations filed ) 441, 443, 444A, 445, and 447
in the October 2007 Filing Window )

MEMORANDUM OPINION AND ORDER

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By the Commission:

TABLE OF CONTENTS

Paragraph
I. BACKGROUND.....1
II. GENERAL NCE PROCEDURES .....2
A. Section 307(b) -- Threshold Fair Distribution Study.....3
B. Point System Selection Process.....5
C. Tie-Breakers.....10
D. Timely Documentation of Comparative Qualifications.....11
III. POINT SYSTEM DETERMINATIONS.....12
IV. NEXT STEPS.....75
V. ORDERING CLAUSES.....80
APPENDIX – Noncommercial Educational Groups

I. BACKGROUND

1. By this Memorandum Opinion and Order (“Order”), the Commission considers 26 groups of mutually exclusive applications for new or modified noncommercial educational (“NCE”) FM station construction permits.1 The Commission resolves such conflicting NCE proposals by applying comparative procedures codified in Part 73, Subpart K, of the Commission’s Rules (the “Rules”).2 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.3

1 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 be considered along with applications filed during the window. See Media Bureau Announces NCE FM New Station and Major Change Filing Procedures for October 12 -19, 2007 Window, Public Notice, 22 FCC Red 15050, 15052 (MB 2007) (“Procedures Notice”).

2 47 C.F.R. §§ 73.7000 – 73.7005.

3 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 and

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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 (2001) ("*NCE MO&O*"), *Erratum*, 16 FCC Rcd 10549 (2001), *recon. denied*, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002) ("*NCE Reconsideration Order*"), *aff'd sub nom.* *American Family Ass'n v. FCC*, 365 F.3d 1156 (D.C. Cir. 2004) ("*American Family*"), *cert. denied*, 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.

channel NCE aural service to at least ten percent of the population (in the aggregate), provided that the population served is at least 2,000 people.<sup>9</sup>

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

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

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

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

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<sup>9</sup> See 47 C.F.R. § 73.7002(b). Applicants were required to use the 2000 Census population data and to count all reserved band aural authorizations, including stations for which a construction permit, but not a license, has been issued. See *Procedures Notice 22* FCC Rcd 15050, 15052.

<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).

application holds an attributable interest do not overlap.<sup>15</sup> To be awarded such points, an applicant's governing documents must include a provision to maintain that diversity in the future. Applicants that are organizations governed by state charters that cannot be amended without legislative action are permitted to base the governing document component of their local diversity certifications on other safeguards that reasonably assure that board characteristics will be maintained.<sup>16</sup> Any applicant awarded diversity of ownership points in this Order has submitted copies of pertinent governing documents to support its certification or, for applicants such as state universities that are governed by laws which cannot be amended without legislative action, an appropriate alternative showing. Thus, the specific point system determinations for each group of mutually exclusive applications that follow only discuss an applicant's documentation if it is insufficient to justify awarding diversity points. An applicant that proposes a full service NCE station that would replace an attributable FM translator may exclude the translator for calculating ownership diversity points if it has pledged to request cancellation of the translator authorization upon the new station's commencement of operations.<sup>17</sup> The Commission has stated that it will, on a waiver basis, similarly allow applicants to exclude Class D (10 watt) FM stations that will be replaced by the proposed full service NCE station.<sup>18</sup> The Commission also has extended waiver treatment to low power FM ("LPFM") stations.<sup>19</sup>

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

8. Fourth, an applicant that proposes the best technical proposal in the group (*i.e.*, proposes service to the largest population and area, excluding substantial areas of water) may receive up to two points. The applicant receives one point if its proposed service area *and* population are ten percent 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

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

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

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

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

<sup>19</sup> See *Comparative Consideration of 59 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, 25 FCC Rcd 1681, 1686 (2010); *Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, 24 FCC Rcd 5013 (2010). See also *Procedures Notice*, 22 FCC Rcd at 15052-53. An applicant seeking to avoid attribution of an LPFM interest must, as part of its window-filed application, submit a request for waiver of the Rule that would otherwise result in the attribution of the LPFM interest in the applicant's point system determination and propose to surrender the LPFM interest. The Commission will waive the LPFM cross-ownership rule so that an NCE FM construction permit may issue to an LPFM licensee, provided that the LPFM license must be divested prior to commencement of program tests by the new NCE FM station. See 47 C.F.R. § 73.860(a).

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

generally accepted applicants' coverage and population claims. We have rounded any numbers expressed in decimals to the nearest whole numbers.

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

### **C. Tie-Breakers.**

10. Applicants tied with the highest number of points awarded in a particular group proceed to a tie-breaker round, in accordance with Section 73.7003(c) of the Rules.<sup>22</sup> The first tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant.<sup>23</sup> The applicant with the fewest attributable authorizations prevails. If the tie is not broken by this first factor, we apply a second tie-breaker: the number of radio station applications attributable to each applicant. Applicants are required to include 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 both by submitting supporting information to the Commission and placing this information in a local public file.<sup>25</sup> Applicant point claims must be readily ascertainable from timely-filed application exhibits. Certifications which require the applicant to submit documentation, but which are not supported with any such timely submitted documentation cannot be credited. For example, every applicant claiming points for diversity of ownership must certify that no party to the application has an attributable interest in a station with an overlapping service contour to the proposed station, that its governing documents require that such diversity be maintained, and "that it has placed documentation of its diversity qualifications in a local public file and has submitted to the Commission copies of that documentation."<sup>26</sup> Similar certifications and documents also are required of applicants claiming points

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

<sup>22</sup> 47 C.F.R. § 73.7003(c).

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

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

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

<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.

as established local applicants.<sup>27</sup> The Commission herein rejects claims where the applicant certifies that it qualifies for points for diversity of ownership or as an established local applicant but fails to supply the supporting information referred to in the certification. While there is some flexibility in the type of documentation an applicant may provide, an applicant submitting no timely documentation at all cannot have made a valid certification. We have adjusted the points of such applicants downward.

### III. POINT SYSTEM DETERMINATIONS

12. This Section contains narrative descriptions of our point system analyses in each mutually exclusive proceeding, organized chronologically by assigned group number. Unless otherwise noted, each component of the analysis is based on applicant-provided information.<sup>28</sup> We have provided readers with an Appendix that condenses the group-by-group narratives that follow into chart form for quick reference. A more detailed guide to the Appendix and its use of abbreviations appears at the beginning of that Section.

13. At the outset, we note that each group of applicants has had an opportunity to resolve application conflicts by settlement and technical amendment. In addition, we note that applicants 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 diminish, but cannot enhance, an applicant's comparative position. Thus, for example, if an applicant amends its technical proposal, our analysis would use the information least favorable to the applicant's comparative position, which generally would be the lowest area and population numbers reported.

14. **Group 399.** This group consists of three mutually exclusive applications for two communities in Oklahoma. Kansas Catholic Educational Radio Corporation ("KCER") proposes to serve Caddo. Bright Light Broadcasting, Inc. ("BLB") and Cameron University ("Cameron") each propose to serve Durant. When applicants propose different communities, the Commission must first determine whether any applicant is credited with a dispositive fair distribution preference. KCER and Cameron each claim eligibility for a fair distribution preference.<sup>29</sup> BLB does not and, accordingly, is eliminated when compared to KCER's application for a different community. No remaining applicant asserts a preference for first NCE service alone, instead relying on both first and second NCE service population totals. KCER and Cameron propose aggregated first and second NCE service to 21,074 and 22,581 people

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

<sup>28</sup> 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 station authorizations and other radio station applications were reported in response to Question V(1) and (2), respectively.

<sup>29</sup> See KCER and Cameron Applications, Questions III(1), III(2), and associated exhibits. KCER's 60 dBu contour encompasses 45,958 people, and its claimed aggregated first and second NCE service is 21,074 people. Cameron's 60 dBu contour encompasses 59,650 people, and its claimed aggregated first and second NCE service is 22,581 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.

respectively. The proposals of KCER and Cameron are comparable because neither would provide a new NCE service to at least 5,000 more people than the other. Accordingly, KCER and Cameron will proceed to a point hearing.

15. Neither applicant claims to be eligible for points as an established local applicant. KCER, but not Cameron, claims two points for diversity of ownership. No applicant claims points as a statewide network. With respect to technical parameters, KCER's proposed 60 dBu contour would encompass 3,642 square kilometers with a population of 45,958. Cameron's proposed 60 dBu contour would encompass 5,166 square kilometers with a population of 59,650. Cameron qualifies for two points under the best technical proposal criterion because its proposal would serve at least 25 percent more area and population than KCER's proposal. Accordingly, KCER and Cameron are each credited with a total of two points. Both applicants will proceed to a tie-breaker.

16. 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. KCER certifies that it has no attributable interest in any radio authorization. Cameron certifies that it has attributable interests in 13 radio authorizations. KCER therefore prevails based on this first tie-breaker and is the tentative selectee in Group 399.

17. **Group 401.** This group consists of seven mutually exclusive applications for five communities in Oregon. Firebare, Inc. ("Firebare") and Confederated Tribes of Siletz Indians of Oregon ("Tribes") each propose service to Siletz. Winds of Praise Broadcasting ("Winds") and Educational Broadcast Service ("EBS") each propose service to Newport. The other applicants are: Oregon State Board of Higher Education for the University of Oregon ("Oregon Board") for Depoe Bay; Community Presbyterian Church of Waldport ("CPCW") for Toledo; and Better Life Television, Inc. ("BLT") for Selma. When applicants propose different communities, the Commission must first determine whether any applicant is credited with a dispositive fair distribution preference. Oregon Board, Firebare, CPCW, and Tribes each claim eligibility for a fair distribution preference.<sup>30</sup> Winds, BLT, and EBS do not and, accordingly, are eliminated. No remaining applicant asserts a preference for first NCE service alone, instead relying on both first and second NCE service population totals. Oregon Board, Firebare, CPCW, and Tribes propose aggregated first and second NCE service to 9,529 people, 9,108 people, 13,370 people, and 5,639 people respectively. These proposals are comparable because none would serve at least 5,000 more people than the next best applicant. Accordingly, the four remaining applicants will proceed to a point hearing.

18. Oregon Board, Firebare, CPCW, and Tribes each claim to be eligible for three points as an established local applicant. Firebare, CPCW, and Tribes claim two points each for diversity of ownership. Tribes, however, does not support its diversity claim and will not be credited with points under this criterion. Oregon Board certifies that it is not entitled to any points under this criterion. No applicant claims points as a statewide network. With respect to technical parameters, Oregon Board's proposed 60 dBu contour would encompass 708 square kilometers with a population of 24,003. Firebare's proposed 60 dBu contour would encompass 688 square kilometers with a population of 23,729. CPCW's proposed 60 dBu contour would encompass 909 square kilometers with a population of 28,433. Tribes' proposed 60 dBu contour would encompass 385 square kilometers with a population of 15,169.

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<sup>30</sup> See Oregon Board, Firebare, CPCW, and Tribes Applications, Questions III(1), III(2), and associated exhibits. Oregon Board's 60 dBu contour encompasses 24,003 people, and its claimed aggregated first and second NCE service is 9,529 people. Firebare's 60 dBu contour encompasses 23,729 people, and its claimed aggregated first and second NCE service is 9,108 people. CPCW's 60 dBu contour encompasses 28,433 people, and its claimed aggregated first and second NCE service is 13,370 people. Tribes' 60 dBu contour encompasses 15,169 people, and its claimed aggregated first and second NCE service is 5,639 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.

CPCW qualifies for one point under the best technical proposal criterion because its proposal would serve at least ten percent more area and population than Oregon Board's next best proposal. Accordingly, Oregon Board and Tribes are each credited with a total of three points, Firebare with a total of five points, and CPCW with a total of six points.<sup>31</sup> CPCW is the tentative selectee in Group 401.

19. **Group 403.** This group consists of four mutually exclusive applications for three communities in Pennsylvania. Berks Community Television, Inc. ("BCT") and Bible Broadcasting Network, Inc. ("BBN") each propose to serve Leesport. Berks Radio Association ("BRA") proposes to serve Frackville. Bridgebuilders International Leadership Network ("BILN") proposes to serve Robesonia. Each applicant claims that it is eligible for a fair distribution preference.<sup>32</sup> BBN and BRA each claim a first service preference. BCT and BILN do not and, thus, are eliminated. BBN and BRA propose a first NCE service to 21,541 and 18,377 people respectively. The first service claims of BBN and BRA are comparable because neither would serve at least 5,000 more people than the other. Because first service is not determinative, we consider their aggregated first and second NCE service to 108,770 people and 107,402 people, respectively. These proposals also are comparable. Accordingly, BBN and BRA will proceed to a point hearing.

20. BRA claims that it qualifies for three points as an established local applicant. However, BRA submits no documentation to support its claim and thus is not credited with any points under this criterion. BBN certifies that it is not entitled to any points under this criterion. Each claims two points for diversity of ownership. However, BRA provides no information from which the Commission or other parties could verify that BRA timely modified its governing documents to maintain diversity in the future. Accordingly, we award two points to BBN but will not award points to BRA under this criterion. Neither applicant claims points as a statewide network. With respect to technical parameters, BBN's proposed 60 dBu contour would encompass 527 square kilometers with a population of 144,445. BRA's proposed 60 dBu contour would encompass 2,047 square kilometers with a population of 162,271. BRA 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 BBN proposal. Accordingly, BBN is credited with a total of two points and BRA is credited with a total of one point. BBN is the tentative selectee in Group 403.

21. **Group 406.** This group consists of the mutually exclusive applications of Alabaster, Inc. ("Alabaster"), Invisible Allies Ministries ("Allies"), and Lock Haven Seventh-Day Adventist Church ("LHSDAC"). Alabaster and LHSDAC each propose to serve Lockhaven, New York. Allies proposes to serve Beech Creek, New York. Each applicant claims that it is eligible for a fair distribution preference.<sup>33</sup> Alabaster, Allies, and LHSDAC each claim a first service preference based on respective first NCE

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<sup>31</sup> Had the Commission accepted Tribes' claim of two diversity points, CPCW nevertheless would have prevailed based on CPCW's receipt of more total points than Tribes.

<sup>32</sup> See BBN, BCT, BRA, and BILN Applications, Questions III(1), III(2), and associated exhibits. BBN's contour encompasses 144,445 people, of whom 108,770 would receive a new aggregated first and second service. BCT's 60 dBu contour encompasses 151,165 people of whom 119,972 would receive a new aggregated first and second service. BRA's 60 dBu contour encompasses 162,271 people of whom 107,402 would receive a new aggregated first and second NCE service. BILN's 60 dBu contour encompasses 30,199 people of whom 3,429 would receive a new aggregated first and second NCE service. 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>33</sup> See Alabaster, Allies, and LHSDAC Applications, Questions III(1), III(2), and associated exhibits. Alabaster's 60 dBu contour encompasses 55,573 people, of whom 35,162 would receive a new aggregated first and second NCE service. Allies' contour encompasses 70,694 people, of whom 40,141 would receive a new aggregated first and second service. LHSDAC's 60 dBu contour encompasses 50,356 people, of whom 33,821 would receive a new aggregated first and second NCE service. 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.



service to 24,701, 28,868, and 24,888 people. These first service claims are comparable because no applicant would serve at least 5,000 people more than the next best applicant. Because first service is not determinative, we consider their respective aggregated first and second NCE service to 35,162, 40,141, and 33,821 people. These proposals also are comparable. Accordingly, Alabaster, Allies, and LHSDAC will proceed to a point hearing.

22. Allies and LHSDAC each claim three points as established local applicants. Alabaster certifies that it is not eligible for points under this criterion. Alabaster, Allies, and LHSDAC each claim two points for diversity of ownership. However, Alabaster provides no support for its diversity claim. Accordingly, Allies, and LHSDAC, but not Alabaster, will receive points under this criterion. No applicant claims points as a statewide network. The applicant with the best technical parameters, Allies, proposes a 60 dBu contour that would encompass 3,197 square kilometers with a population of 70,694. Alabaster's and LHSDAC's proposed 60 dBu contours would respectively encompass 1,839 square kilometers with a population of 55,573, and 1,822 square kilometers with a population of 50,356. Allies qualifies for two points under the best technical proposal criterion because its proposal would serve at least 25 percent more area and population than Alabaster's next best proposal. Accordingly, Allies is credited with a total of seven points, LHSDAC with a total of five points, and Alabaster is not credited with any points. Thus, Allies is the tentative selectee in Group 406.

23. **Group 408.** This group consists of six mutually exclusive applications for four different communities. Redeemer Broadcasting, Inc. ("Redeemer") proposes to serve Parkton, Maryland. The other applicants propose service to communities in Pennsylvania. Four Rivers Community Broadcasting Corp. ("FRCB") and City of York ("City") each propose service to Spring Grove. NC Friends Broadcasting, Inc. ("NC") and WITF, Inc. ("WITF") each propose service to Hanover. York Seventh-Day Adventist Church ("YSDA") proposes to serve Shrewsbury. Redeemer, FRCB, City, and WITF each claim to be eligible for a fair distribution preference.<sup>34</sup> YSDA and NC do not and, therefore, are eliminated. FRCB, City, and WITF claim first service preferences based on a respective first NCE service to 37,383, 11,335, and 38,911 people. Redeemer certifies that it is not eligible for a first service preference and is thus eliminated. City is also eliminated because it would provide a first NCE service to at least 5,000 people fewer than FRCB's next best proposal. The first service claims of FRCB and WITF are comparable because neither would serve at least 5,000 people more than the other. Because first service is not determinative for FRCB and WITF, we consider their aggregated first and second NCE service to 69,460 and 67,112 people, respectively. These claims are comparable because neither exceeds the other by at least 5,000 people. Therefore, FRCB and WITF will proceed to a point hearing.

24. Neither FRCB nor WITF claims any points as an established local applicant. FRCB claims two points for diversity of ownership. WITF acknowledges that it is not eligible for any points under this criterion. Neither applicant claims points as a statewide network. With respect to technical parameters, FRCB's proposed 60 dBu contour would encompass 787 square kilometers with a population of 111,282. WITF's proposed 60 dBu contour would encompass 681 square kilometers with a population of 93,957. FRCB 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 WITF proposal. Accordingly, FRCB is credited with a total of three points and WITF is not credited with any points. FRCB is the tentative selectee in Group 408.

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<sup>34</sup> See Redeemer, FRCB, City, and WITF Applications, Questions III(1), III(2), and associated exhibits. Redeemer's 60 dBu contour encompasses 34,790 people of whom 11,542 would receive a new second NCE service. FRCB's contour encompasses 111,282 people, of whom 69,460 would receive a new aggregated first and second NCE service. City's 60 dBu contour encompasses 49,262 people of whom 25,315 would receive a new aggregated first and second NCE service. WITF's 60 dBu contour encompasses 93,957 people of whom 67,112 would receive a new aggregated first and second NCE service. 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.

25. **Group 409.** This group consists of 11 mutually exclusive applications to serve six communities in Puerto Rico and the Virgin Islands. Two applicants propose service to Vieques, Puerto Rico: Committee for the Rescue and Development of Vieques (“CRDV”) and Vieques Youth Leadership Initiative, Inc. (“Youth”). Three applicants propose to serve Culebra, Puerto Rico: Ministerio Educativo Marcos 16:15 (“MEM”), Puerto Rico Public Broadcasting Corporation (“PRPB”), and Hispanic Broadcast System, Inc. (“HBS”). HBS also has an application in the group proposing service to Christiansted, Virgin Islands. Three additional applicants propose service to Christiansted: Tillandsia Radio Outreach, Inc. (“Tillandsia”), Texas Pelican Media (“TPM”), and Optima Enrichment, Inc. (“Optima”). The other applicants are: Family Educational Association, Inc. (“FEA”) for Esperanza, Puerto Rico, and Crucian Educational Nonprofit Group, Inc. (“Crucian”) for Frederiksted, Virgin Islands.

26. Five applicants claim to be eligible for a fair distribution preference based on supporting documentation.<sup>35</sup> Crucian and TPM also claim to be eligible for a fair distribution preference but provide no support for their claims. Crucian refers to an engineering exhibit which contains no fair distribution analysis. TPM provides no population numbers that can be compared to the claims of other applicants. Accordingly, Crucian and TPM are eliminated. MEM, CRDV, FEA, and HBS-Culebra are also eliminated because each certifies that it is not eligible for a fair distribution preference. No remaining applicant claims that it would be eligible for a fair distribution preference based on first service. Each would provide a respective aggregated first and second service as follows: Youth to 51,181 people (no first service plus 51,181 second service); PRPB to 51,187 people (no first service plus 51,187 second service); Tillandsia to 32,466 people (no first service plus 32,466 second service); HBS-Christiansted to 43,001 people (no first service plus 43,001 second service); and Optima to 36,221 people (no first service plus 36,221 second service). Tillandsia, HBS-Christiansted, and Optima are eliminated because they would provide aggregated new first and second NCE service to at least 5,000 people fewer than Youth’s next best application for a different community. The fair distribution claims of Youth and PRPB are comparable because neither would exceed the other by at least 5,000 people. Therefore, those two remaining applicants will proceed to a point hearing.

27. Youth and PRPB each claim that they qualify for points as an established local applicant. Youth claims two points for diversity of ownership. PRPB certifies that it is not eligible for points under this criterion. Neither applicant claims points as a statewide network. With respect to technical parameters, Youth’s proposed 60 dBu contour would encompass 283 square kilometers with a population of 62,874. PRPB’s proposed 60 dBu contour would encompass 294 square kilometers with a population of 65,665. Neither applicant qualifies for any points under the best technical proposal criterion because their proposals are comparable, *i.e.*, neither would serve at least 10 percent more area and population than the other. Accordingly, Youth is credited with a total of five points and PRPB is credited with a total of three points. Youth is the tentative selectee in Group 409.

28. **Group 410.** This group consists of five mutually exclusive applications proposing service to four different communities. Calvary Chapel of Southeastern Connecticut (“CCSC”) and Academy of St. Therese (“AST”) each propose to serve Pawcatuck, Connecticut. Sacred Heart University, Inc. (“Sacred Heart”) has two applications in this group, one for Block Island, Rhode Island and the other for Charlestown, Rhode Island. Rhode Island Public Radio (“RIPR”) proposes to serve Westerly, Rhode Island. CCSC, AST, Sacred Heart-Charlestown, and RIPR claim to be eligible for a fair

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<sup>35</sup> See Youth, PRPB, Tillandsia, HBS-Christiansted, and Optima Applications, Questions III(1), III(2), and associated exhibits. The applicants claim to provide a new aggregated first and second NCE service to the following population within their respective 60 dBu contours: Youth to 51,181 of 62,874 people; PRPB to 51,187 of 65,665 people; Tillandsia to all 32,466 of 32,466 people; HBS-Christiansted to all 43,001 of 43,001 people; and Optima to all 36,221 of 36,221 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.

distribution preference.<sup>36</sup> Sacred Heart-Block Island does not and, thus, is eliminated. No remaining applicant claims that it would be eligible for a fair distribution preference based on first service. Each would provide a respective aggregated first and second service as follows: CCSC to 20,732 people (1,010 first service plus 19,632 second service); AST to 24,369 people (no first service plus 24,369 second service); Sacred Heart-Charlestown to 12,798 people (no first service plus 12,798 second service); and RIPR to 13,716 people (no first service plus 13,716 second service). Sacred Heart-Charlestown and RIPR are eliminated because they would provide aggregated new first and second NCE service to at least 5,000 people fewer than CCSC's next best application for a different community. AST and CCSC are the only two applicants remaining, and each proposes to serve the same community. Therefore, AST and CCSC will proceed to a point hearing.

29. CCSC and AST claim three points each as established local applicants and two points each for diversity of ownership. Neither applicant claims points as a statewide network. With respect to technical parameters, CCSC's proposed 60 dBu contour would encompass 400 square kilometers with a population of 60,758. AST's proposed 60 dBu contour would encompass 390 square kilometers with a population of 51,486. Neither applicant qualifies for any points under the best technical proposal criterion because their proposals are comparable, *i.e.*, neither proposal would serve at least ten percent more area and population than the other. Accordingly, CCSC and AST are credited with a total of five points each and will proceed to a tie-breaker.

30. 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. CCSC and AST 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. CCSC certifies that it has an attributable interest in three applications. AST certifies that it has one attributable application. Accordingly, AST prevails on the basis of this second tie-breaker and is the tentative selectee in Group 410.

31. **Group 412.** This group consists of nine mutually exclusive applications for six different South Carolina communities. Three applicants propose service to Cross Hill: Solid Foundation Broadcasting Corporation ("SF"), Greenwood Broadcasters Ltd, Inc. ("GBLI"), and Benedict College ("Benedict"). Community Impact Foundation, Inc. ("CIF") and Radio Training Network, Inc. ("RTN") propose to serve Greenwood. The other applicants are: Lost Boys Broadcast Network ("Lost Boys") for Simpsonville; Community Broadcast Services ("CBS") for Laurens; Richburg Educational Broadcasters, Inc. ("Richburg") for Joanna; and St. Joseph's Catholic School, Inc. ("SJCS") for Gray Court.

32. SF, CBS, Richburg, Benedict, SJCS, and GBLI claim to be eligible for a fair distribution preference.<sup>37</sup> GBLI provides no support for its claim and is thus eliminated. CIF, Lost Boys, and RTN

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<sup>36</sup> See CCSC, AST, Sacred Heart-Charlestown, and RIPR Applications, Questions III(1), III(2), and associated exhibits. The applicants claim to provide a new aggregated first and second NCE service to the following population within their respective 60 dBu contours: CCSC to 20,732 of 60,758 people; AST to 24,369 of 51,486 people; Sacred Heart-Charlestown to 12,798 of 18,806 people; and RIPR to 13,716 of 38,154 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>37</sup> See SF, CBS, Richburg, Benedict, SJCS and GBLI Applications, Questions III(1), III(2), and associated exhibits. GBLI does not provide any numbers to demonstrate its eligibility and to enable comparison to others. The other applicants claim to provide a new aggregated first and second NCE service to the following population within their respective 60 dBu contours: SF to 83,364 of 114,791 people; CBS to 89,007 of 139,001 people (using the least favorable numbers provided, as explained in paragraph 13 *supra.*); Richburg to 82,417 of 121,892 people; Benedict to 53,799 of 79,066 people; and SJCS to 88,458 of 139,051 people. Thus, each of these other applicants 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.

each certify that they do not qualify for fair distribution preferences and are also eliminated. The five remaining applicants each claim that they would be eligible for a fair distribution preference based on provision of a first service as follows: SF to 63,288 people; CBS to 66,725 people; Richburg to 59,902 people; Benedict to 53,799 people; and SJCS to 65,736 people. Benedict is eliminated because it proposes to serve at least 5,000 people fewer than Richburg's next best application. The proposed first service among the other applicants is comparable. Accordingly, we examine their proposed aggregated first and second service. The remaining applicants would provide a respective aggregated first and second service as follows: SF to 83,364 people (63,288 first service plus 20,076 second service); CBS to 89,007 people (66,725 first service plus 22,282 second service); Richburg to 82,417 people (59,902 first service plus 22,515 second service); and SJCS to 88,458 people (65,736 first service plus 22,722 second service). These proposals are comparable because none would serve at least 5,000 people more than the next best proposal. Each will proceed to a point hearing.

33. CBS and SJCS claim three points each under the established local applicant criterion. SF and Richburg each certify that it is not entitled to any points under this criterion. Each applicant claims two points for diversity of ownership. No applicant claims points as a statewide network. With respect to technical parameters, SF's proposed 60 dBu contour would encompass 2,393 square kilometers with a population of 114,791. CBS's proposed 60 dBu contour would encompass 3,764 square kilometers with a population of 139,001. Richburg's proposed 60 dBu contour would encompass 2,429 square kilometers with a population of 121,892. SJCS's proposed 60 dBu contour would encompass 3,762 square kilometers with a population of 139,051. No applicant in this group is eligible for any points under the best technical proposal criterion because there is no single proposal that serves the largest area *and* population. Accordingly, SF and Richburg are credited with a total of two points each. CBS and SJCS are credited with a total of five points each. SF and Richburg are eliminated. CBS and SJCS will proceed to a tie-breaker.

34. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. CBS and SJCS each certify that they have no attributable interests in other radio authorizations. Therefore, we proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. CBS and SJCS each certify that they have only one attributable application. Accordingly, we proceed to the tie-breaker of last resort – mandatory timesharing. CBS and SJCS are each tentative selectees in Group 412 on a timesharing basis.

35. **Group 413.** This group consists of six mutually exclusive applications proposing to serve three different communities. The following four applicants propose to serve Saluda, South Carolina: Spirit Broadcasting Group, Inc. ("SBG"); Friends of Hometown Radio ("Friends"); Benedict College ("Benedict"); and JVH Broadcasting, Inc. ("JVH"). Radio Training Network ("RTN") proposes to serve Lincolnton, Georgia. Dayspring Ministries of Concord Baptist Church ("Dayspring") proposes to serve Batesburg, South Carolina. Each of the applicants for the community of Saluda claims that it would be eligible for a fair distribution preference. The applicants for other communities do not. Accordingly, RTA and Dayspring are eliminated. As the remaining applicants (SBG, Friends, Benedict, and JVH) propose the same community, each will proceed to a point hearing.

36. Each remaining applicant certifies that it is not entitled to any points as an established local applicant. SBG claims two points for diversity of ownership. Friends, Benedict, and JVH do not. No applicant claims statewide network points. With respect to technical parameters, SBG's proposed 60 dBu contour would encompass 2,815 square kilometers with a population of 42,354. Friends' proposed 60 dBu contour would encompass 1,242 square kilometers with a population of 19,018. Benedict's 60 dBu contour would encompass 1,012 square kilometers with a population of 15,209. JVH's 60 dBu contour would encompass 2,501 square kilometers with a population of 40,324. No applicant is eligible for any points under the best technical proposal criterion because SBG, the applicant that would serve the largest area and population, does not propose to serve at least 10 percent more area and population than

JVH, the applicant with the next best proposal. Accordingly, SBG is credited with a total of two points. Friends, Benedict, and JVH are not credited with any points. SBG is the tentative selectee in Group 413.

37. **Group 414.** This group consists of six mutually exclusive applications to serve three communities in South Carolina. The following four applicants propose to serve St. George: Friends of Hometown Radio (“Friends”); Radio Training Network, Inc. (“RTN”); Cultural Renewal Radio, UA (“CRR”); and Faith Cathedral Fellowship, Inc. (“FCF”). Spirit Broadcasting Group, Inc. (“SBG”) proposes to serve Branchville. Life Baptist Church (“LBC”) proposes to serve Eutawville. SBG, Friends, and FCF claim to be eligible for a fair distribution preference.<sup>38</sup> LBC, RTN, and CRR do not and, thus, are eliminated. No remaining applicant asserts a preference for first NCE service alone, instead relying on both first and second NCE service population totals. SBG, Friends, and FCF propose aggregated first and second NCE service to 4,694 people, 3,517 people, and 4,807 people respectively. These proposals are comparable because none would serve at least 5,000 more people than the next best applicant. Accordingly, the three remaining applicants will proceed to a point hearing.

38. FCF claims three points as an established local entity. SBG and Friends each certify that they are not entitled to any points under this criterion. Each applicant claims two points for diversity of ownership. However, Friends provides no support for its diversity claim. Accordingly, we will not credit Friends with any points under this criterion. No applicant in this group claims any points as a statewide network. With respect to technical parameters, SBG’s proposed 60 dBu contour would encompass 2,850 square kilometers with a population of 44,704. Friends’ proposed 60 dBu contour would encompass 1,074 square kilometers with a population of 15,973. FCF’s proposed 60 dBu contour would encompass 3,107 square kilometers with a population of 47,627. No applicant in this group is eligible for any points under the best technical proposal criterion because FCF, the applicant proposing to serve the largest area and population would not serve at least 10 percent more area and population than SBG, the applicant with the next best proposal. Accordingly, SBG is credited with a total of two points, FCF with a total of five points, and Friends is not credited with any points.<sup>39</sup> FCF is the tentative selectee in Group 414.

39. **Group 416.** This group consists of the mutually exclusive applications of Family Worship Center Church, Inc. (“FWCC”) and South Dakota Board of Directors for Educational Telecommunications (“SD Board”). Each applicant proposes to serve Watertown, South Dakota.

40. SD Board claims points as an established local applicant. FWCC certifies that it is not entitled to any points under this criterion. Each claims two points for diversity of ownership. FWCC bases its claim on a pledge to divest translator station K211EC, Watertown, South Dakota. However, it does not support its diversity claim with governing documents requiring diversity to be maintained in the future. Accordingly, we will credit SD Board, but not FWCC, with points under this criterion. No applicant claims points as a statewide network. With respect to technical parameters, FWCC’s proposed 60 dBu contour would encompass 1,589 square kilometers with a population of 26,255. SD Board’s proposed 60 dBu contour would encompass 4,032 square kilometers with a population of 32,254. SD Board qualifies for one point under the best technical proposal criterion because its proposal would serve at least 10 percent more area and population than FWCC’s proposal. Accordingly, SD Board is credited

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<sup>38</sup> See SBG, Friends, and FCF Applications, Questions III(1), III(2), and associated exhibits. The applicants claim to provide a new aggregated first and second NCE service to the following population within their respective 60 dBu contours: SBG to 4,694 of 44,704 people; Friends to 3,517 of 15,973 people; FCF to 4,807 of 47,627 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>39</sup> Had the Commission accepted Friends’ claim of two diversity points, FCF nevertheless would have prevailed based on FCF’s receipt of more total points than Friends.

with a total of six points. FWCC is not credited with any points.<sup>40</sup> Thus, SD Board is the tentative selectee in Group 416.

41. **Group 417.** This group consists of eight mutually exclusive applications to serve three communities in South Dakota. Five applicants propose service to Rapid City: Wilbur Gospel Communications and Foundation (“Wilbur”), Saidnewsfoundation (“SNF”), South Dakota School of Mines and Technology (“Mines”), Tightrope Broadcasting, Inc. (“Tightrope”), and Three Angels Seventh-Day Adventist Church (“Angels”). Two applicants propose to serve Box Elder: The Positive Radio Network (“Positive”) and Rapid City Columbian Club, Inc. (“RCCC”). St. Paul Cultural Broadcasting, Inc. (“SPCB”) proposes service to Custer. When applicants propose different communities, the Commission must first determine whether any applicant is credited with a dispositive fair distribution preference. With the exception of Angels, each applicant in this group certifies that it is not eligible for a fair distribution preference. Angels claims eligibility for a fair distribution preference based on second service.<sup>41</sup> Angels, however, is mistaken. The population of 1,068 (135 first service plus 933 second service) to which Angels would offer a new NCE service is less than 10 percent of the population of 105,679 it proposes to serve and also less than 2,000 people. Thus, we find that Angels is not entitled to a fair distribution preference and all proposals will proceed to a point hearing.

42. Mines, Angels, and RCCC claim three points each as an established local applicant. Positive, Wilbur, SNF, SPCB, and Tightrope do not. SNF, Mines, SPCC, Tightrope, Angels, and RCCC claim two points each for diversity of ownership. SNF bases its diversity claim on a pledge that the current proposal would replace four of its South Dakota translator stations. SNF, however, provides insufficient documentation of its diversity claim. SNF submits an exhibit stating that it is committed to maintaining local diversity, but it does not show that it took any timely steps to amend its governing documents to require that diversity be maintained. Accordingly, SNF, will not be credited with any points under this criterion. No applicant claims points as a statewide network. With respect to technical parameters, the applicants propose service to the following areas and populations within their respective proposed 60 dBu contours: Positive to 2,503 square kilometers with a population of 12,693; Wilbur to 1,015 square kilometers with a population of 88,839; Mines to 2,549 square kilometers with a population of 96,027; SPCB to 2,754 square kilometers with a population of 34,847; Tightrope to 4,403 square kilometers with a population of 100,938; Angels to 5,473 square kilometers with a population of 105,679; and RCCC to 6,086 square kilometers with a population of 65,662. SNF provides no numbers under this criterion and thus we will consider it to serve zero square kilometers with a population of zero.<sup>42</sup> No applicant in this group qualifies for any points under the best technical proposal criterion because no proposal would serve both the largest area and population. Accordingly, Positive, Wilbur, and SNF are not credited any points. SPCB and Tightrope are credited with a total of two points each. Mines, Angels, and RCCC are credited with a total of five points each. Positive, Wilbur, SNF, SPCB, and Tightrope are eliminated.<sup>43</sup> Mines, Angels, and RCCC will proceed to a tie-breaker.

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<sup>40</sup> Had the Commission accepted FWCC’s claim of two diversity points, SD Board nevertheless would have prevailed based on SD Board’s receipt of more total points than FWCC.

<sup>41</sup> Angels’ 60 dBu contour encompasses 105,679 people. Angels’ claimed aggregated first and second NCE service is 1,068 people. See Angels Application, Questions III(1), III(2), and associated exhibits. Thus, it would not 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. As discussed in the text, Angels is not eligible for a fair distribution preference.

<sup>42</sup> See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications*, 22 FCC Rcd 6101, 6121 (2007) (when, in two-applicant group, one applicant provided technical numbers and the other did not, applicant providing the numbers was awarded maximum technical points).

<sup>43</sup> Had the Commission accepted SNF’s claim of two diversity points, SNF would have not have prevailed because it nevertheless would have had fewer total points than several other applicants.

43. 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. Mines, Angels, and RCCC each certify that they have no attributable interests in other radio authorizations. Therefore, we proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. RCCC certifies that it has one pending application. Mines and Angels certify that they each have no attributable application other than the one under present consideration, but incorrectly express this fact as having “zero” applications. The correct number of pending applications attributable to each applicant in this group is “one.” Accordingly, we proceed to the tie-breaker of last resort – mandatory timesharing. Mines, Angels, and RCCC are each tentative selectees in Group 417 on a timesharing basis.

44. **Group 418.** This group consists of ten mutually exclusive applications. Caleb Radio Network (“Caleb”) proposes to serve Gamaliel, Kentucky. Immanuel Broadcasting Network (“Immanuel”) and Iglesia Jesucristo es Mi Refugio de San Antonio, Inc. (“IJMR”) respectively propose to serve “Oakdale” and “Oak Dale,” Tennessee. We believe that Immanuel and IJMR propose to serve the same community. The other applicants in the group also propose service to communities in Tennessee: Victor Broadcasting, Inc. (“Victor”) to Gainesboro; Appalachian Performing Arts Institute, Inc. (“APAI”) to Rickman; Community Radio, Inc. (“CRI”) to Oliver Springs; Cookeville Christian Broadcasting (“Cookeville”) to Livingston; Roane State Community College (“Roane”) to Harriman; Calvary Chapel of Knoxville (“CCK”) to Oak Ridge; and Rural Tennessee Educational Foundation (“RTEF”) to Byrdstown.

45. When applicants propose different communities, the Commission must first determine whether any applicant is credited with a dispositive fair distribution preference. Caleb, Victor, CRI, Cookeville, Roane, and CCK each claim to be eligible for a fair distribution preference.<sup>44</sup> APAI, RTEF, Immanuel, and IJMR do not and, thus, are eliminated. None of the remaining applicants claim to be eligible for a fair distribution preference based on first service alone. Their respective claims of aggregated first plus second service are: Caleb to 25,024 people (no first service plus 25,024 second service); Victor to 6,530 people (no first service plus 6,530 second service); CRI to 31,373 people (21 first service plus 31,352 second service); Cookeville to 24,408 people (no first service plus 24,408 second service); Roane to 16,961 people (no first service plus 16,961 second service); and CCK to 34,407 people (495 first service plus 33,912 second service). The fair distribution analysis is not dispositive with respect to CRI and CCK because neither would serve at least 5,000 more people than the other. However, there is a 5,000 person gap between the proposal of CRI and the next best proposal of Caleb for a different community. Accordingly, Caleb and all remaining applicants proposing service to fewer people than Caleb are eliminated. CRI’s and CCK’s comparable proposals must proceed to a point hearing.

46. CCK claims three points as an established local applicant. CRI certifies that it is not entitled to any points under this criterion. CCK claims two points for diversity of ownership, based on a pledge to divest LPFM station WIAM-LP, Knoxville, Tennessee. CRI does not claim any points under this criterion. Neither applicant claims points as a statewide network. With respect to technical

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<sup>44</sup> See Caleb, Victor, CRI, Cookeville, Roane, and CCK Applications, Questions III(1), III(2), and associated exhibits. Caleb’s 60 dBu contour encompasses 57,062 people and its claimed aggregated first and second service is 25,024 people. Victor’s 60 dBu contour encompasses 11,406 people and its claimed aggregated first and second service is 6,530 people. CRI’s 60 dBu contour encompasses 106,291 people and its claimed aggregated first and second service is 31,373 people. Cookeville’s 60 dBu contour encompasses 42,753 people and its claimed aggregated first and second service is 24,408 people. Roane’s 60 dBu contour encompasses 18,771 people and its claimed aggregated first and second service is 16,961 people. CCK’s 60 dBu contour encompasses 65,012 people and its claimed aggregated first and second service is 34,407 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.

parameters, CRI's proposed 60 dBU contour would encompass 3,180 square kilometers with a population of 106,291. CCK's proposed 60 dBU contour would encompass 2,576 square kilometers with a population of 65,012 people. CRI qualifies for one point under the best technical proposal criterion because its proposal would serve at least ten percent more area and population than the CCK proposal. Accordingly, CRI is credited with a total of one point and CCK is credited with a total of five points. CCK is the tentative selectee in Group 418.

47. **Group 421.** This group consists of seven mutually exclusive applications, all proposing service to the community of Port Arthur, Texas. The applicants are: Truth and Education Corp. ("Truth"), Centro Cristiano de Vida Eterna ("CCVE"), Vision Celestial ("Vision"), Family Life Broadcasting, Inc. ("FLB"), KMZD Radio, Inc. ("KMZD"), Houston Christian Broadcasters, Inc. ("HCB"), and Grace Fellowship Church ("Grace").

48. Truth and Grace claim to be eligible for three points each as established local applicants. The other applicants in the group certify that they are not entitled to receive any points under this criterion. All seven applicants claim two points each for diversity of ownership. However, FLB, KMZD, and HCB provide no documentation of their diversity claims, and Grace shows only that it had taken initial steps to divest its interests in two full service radio stations licensed to Jasper, Texas. Specifically one of Grace's principals filed an application to transfer control of those stations to another stockholder about two weeks before the filing window, which remained pending when the filing window closed. Grace cannot enhance its comparative position based on the divestiture of full-service stations after the close of the filing window.<sup>45</sup> Accordingly, FLB, KMZD, HCB, and Grace do not qualify for points based on diversity of ownership. Only Truth, CCVE, and Vision will receive two points under this criterion. No applicant in this group claims any points as a statewide network. With respect to technical parameters, the applicants' respective proposed 60 dBU contours encompass the following areas and populations: Truth, 824 square kilometers and 62,329 people; CCVE, 332 square kilometers and 81,027 people; Vision, 302 square kilometers and 37,331 people; FLB, 550 square kilometers and 135,205 people; KMZD, 1,195 square kilometers and 135,970 people; HCB, 656 square kilometers and 93,548 people; and Grace, 1,017 square kilometers and "58" people. The applicant with the best technical proposal, KMZD, does not qualify for any points under the best technical proposal criterion because KMZD would not serve at least ten percent more people than FLB, the applicant with the next best population proposal. Accordingly, Truth is credited with a total of five points, CCVE and Vision with a total of two points each, and Grace with a total of three points. FLB, KMZD, and HCB are not credited with any points. Truth is the tentative selectee in Group 421.

49. **Group 423.** The five mutually exclusive applicants in this group propose service to four different communities in Texas. Gospel American Network ("GAN") and Oasis of Faith ("Oasis") each propose to serve Abilene. CSSI Non-Profit Educational Broadcasting Corp. ("CSSI") proposes to serve Breckenridge. Home Town Communications, Inc. ("HTC") proposes to serve Ingram. La Promesa Foundation ("Promesa") would serve Albany. CSSI and Promesa each claim to be eligible for a fair distribution preference.<sup>46</sup> HTC, GAN, and Oasis each certify that they are not eligible for such a preference and, accordingly, are eliminated. CSSI would provide a new first NCE service to 9,249

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<sup>45</sup> See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications*, 22 FCC Rcd at 6120 (citing *NCE MO&O*, 16 FCC Rcd at 5109 n.24) (rejection of point claim based on pledge to divest interest in full service station after "snapshot" date for calculating points).

<sup>46</sup> See CSSI and Promesa Applications, Questions III(1), III(2), and associated exhibits. CSSI's 60 dBU contour encompasses 9,255 people and its claimed aggregated first and second service is all 9,255 people. Promesa's 60 dBU contour encompasses 49,173 people and its claimed aggregated first and second service is 12,460 people. Thus, each applicant 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.



people. Promesa would provide a new first NCE service to 7,483 people. These claims are comparable because neither would provide new service to at least 5,000 people more than the other. Accordingly, we examine aggregated new first and second NCE service. CSSI would provide aggregated first and second service to 9,255 people (9,249 first service plus 6 second service). Promesa would provide such service to 12,460 people (7,483 first service plus 4,977 second service). The CSCSI and Promesa applications remain comparable. Thus, they will proceed to a point hearing.

50. Neither CSSI nor Promesa claims any points as an established local applicant. Promesa, but not CSSI, claims two points for diversity of ownership. Neither applicant claims points as a statewide network. With respect to technical parameters, CSSI's proposed 60 dBu contour would encompass 1,852 square kilometers with a population of 9,255. Promesa's proposed 60 dBu contour would encompass 6,366 square kilometers with a population of 49,173. Promesa qualifies for two points under the best technical proposal criterion because its proposal would serve at least 25 percent more area and population than the CSSI proposal. Accordingly, Promesa is credited with a total of four points and CSSI is not credited with any points. Promesa is the tentative selectee in Group 423.

51. **Group 426.** This group consists of five applicants that propose to serve different communities in Texas. The applicants are: Austin County Community Communications ("County") for Hallettsville, Centro Cristiano de Vida Eterna ("CCVE") for Weedhaven, The Bridge Church, Inc. ("Bridge") for El Campo, Gospel American Network ("GAN") for Eagle Lake, and Shiner Catholic School ("SCS") for Shiner. When applicants propose different communities, the Commission must first determine whether any applicant is credited with a dispositive fair distribution preference. County and SCS claim to be eligible for a fair distribution preference.<sup>47</sup> Bridge also claims to be eligible for a fair distribution preference but provides no corresponding exhibit with numbers to support its claim. Accordingly, Bridge is eliminated. CCVE and GAN also are eliminated because they each certify that they are not eligible for a fair distribution preference. Each of the remaining applicants claims a first service preference: County for service to 10,018 people and SCS for service to 6,505 people. These claims are comparable because neither would provide new service to at least 5,000 people more than the other. County proposes an aggregated first and second service to 19,517 people (10,018 first service plus 9,499 second service) and SCS proposes such service to 19,435 people (6,505 first service plus 12,930 second service). These claims also are comparable. County and SCS must proceed to a point hearing.

52. SCS claims three points as an established local applicant. County does not. County and SCS claim two points each for diversity of ownership. Neither applicant claims points as a statewide network. With respect to technical parameters, County's proposed 60 dBu contour would encompass 3,316 square kilometers with a population of 20,302. SCS's proposed 60 dBu contour would encompass 2,706 square kilometers with a population of 19,916. Neither applicant is eligible for any points under the best technical proposal criterion because their proposals are comparable, *i.e.*, neither applicant proposes to serve at least 10 percent more area and population than the other. Accordingly, County is credited with a total of two points and SCS with a total of five points. SCS is the tentative selectee in Group 426.

53. **Group 428.** This group consists of the mutually exclusive applications of Arts for the Community, Inc. ("ACI") for Kingland, Texas and Texas Public Radio ("TPR") for Liano, Texas. When applicants propose different communities, the Commission must first determine whether any applicant is credited with a dispositive fair distribution preference. Both ACI and TPR claim to be eligible for a fair

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<sup>47</sup> See County and SCS Applications, Questions III(1), III(2), and associated exhibits. County's 60 dBu contour encompasses 20,302 people and its claimed aggregated first and second NCE service is 19,517 people. SCS's 60 dBu contour encompasses 19,916 people and its claimed aggregated first and second NCE service is 19,436 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.

distribution preference.<sup>48</sup> Each claims a first service preference, ACI for service to 9,897 people and TPR for service to 11,391 people. These first service claims are comparable because neither exceeds the other by at least 5,000 people. The aggregated proposed first and second service of ACI to 11,927 people (9,897 first service plus 2,030 second service) and TPR to 13,449 people (11,391 first service plus 2,058 second service) also are comparable. ACI and TPR must proceed to a point hearing.

54. Neither applicant claims any points as an established local applicant. Each claims two points for diversity of ownership. Neither applicant claims points as a statewide network. With respect to technical parameters, ACI's proposed 60 dBu contour would encompass 1,119 square kilometers with a population of 13,435. TPR's proposed 60 dBu contour would encompass 1,296 square kilometers with a population of 16,211. TPR qualifies for one point under the best technical proposal criterion because its proposal would serve at least 10 percent more area and population than ACI's proposal. Accordingly, ACI is credited with a total of two points and TPR is credited with a total of three points. TPR is the tentative selectee in Group 428.

55. **Group 430.** This group consists of nine mutually exclusive applications that propose to serve eight different communities in Texas. Marfa Public Radio ("MPR") and La Promesa Foundation ("Promesa") each propose to serve Marfa. Radio Bilingue, Inc. ("RBI") and Templo Piedra Angular ("TPA") each propose to serve Presidio. Hispanic Outreach Ministry, Inc. ("HOM") has three applications in this group, proposing service to the communities of Redford, Marathon, and Barstow. The other applicants are Houston Christian Broadcasters, Inc. ("HCB") for Alpine, and Texas Community Broadcast Association, Inc. ("TCBA") for Van Horn.

56. When applicants propose different communities, the Commission must first determine whether any applicant is credited with a dispositive fair distribution preference. RBI, MPR, HCB, Promesa, and TPA claim to be eligible for a fair distribution preference.<sup>49</sup> TCBA and HOM (all three applications) state that they do not qualify for a fair distribution preference and, therefore, are eliminated. Each of the five remaining applicants claims that it would be eligible for a fair distribution preference based on provision of a first service as follows: RBI to 4,444 people; MPR to 12,748 people; HCB to 12,931 people; Promesa to 2,423 people; and TPA to 4,469 people. RBI, Promesa, and TPA are eliminated because each proposes to serve at least 5,000 people fewer than a next best application for a different community. The first service proposals of MPR and HCB are comparable because neither would provide a new NCE service to at least 5,000 more people than the other. Ordinarily, we would examine proposed second service. However, there is no second service to consider in this case because MPR and HCB each proposed a first service to the entire population within their proposed service contours. Each will proceed to a point hearing.

57. MPR certifies that it is entitled to three points as an established local applicant. HCB does not. Each applicant claims to be entitled to two points for diversity of ownership. However, MPR does not support its diversity claim with documents requiring diversity to be maintained. Accordingly, HCB will receive two points, and MPR will receive no points under this criterion. Neither applicant

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<sup>48</sup> See ACI and TPR Applications, Questions III(1), III(2), and associated exhibits. ACI's 60 dBu contour encompasses 13,435 people and its claimed aggregated first and second service is 11,927 people. TPR's 60 dBu contour encompasses 16,211 people and its claimed aggregated first and second service is 13,449 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>49</sup> See RBI, MPR, HCB, Promesa, and TPA Applications, Questions III(1), III(2), and associated exhibits. RBI claims that it would provide aggregated first and second NCE service to all 4,444 of 4,444 people within its proposed 60 dBu contour; MPR to all 12,748 of 12,748 people; HCB to all 12,931 of 12,931 people; Promesa to all 2,423 of 2,423 people; and TPA to all 4,469 of 4,469 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.

claims to be entitled to any points as a statewide network. With respect to technical parameters, MPR's proposed 60 dBu contour would encompass 15,813 square kilometers with a population of 12,748. HCB's proposed 60 dBu contour would encompass 16,827 square kilometers with a population of 12,931. Neither applicant is eligible for any points under the best technical proposal criterion because neither proposes to serve a population and area at least ten percent greater than the other. Accordingly, MPR is credited with a total of three points and HCB is credited with a total of two points. MPR is the tentative selectee in Group 430.

58. **Group 431.** This group consists of seven applications to serve four different communities. Three applicants propose to serve Horizon City, Texas: Iglesia Jesucristo es Mi Refugio, Inc. ("IJMRI"), Christian Ministries of El Paso, Inc. ("CMEP"), and Open Arms Community of El Paso ("Arms"). Two applicants propose to serve Butterfield, Texas: New Wine Church of San Antonio ("Wine") and Sin Fronteras Organizing Project ("SFOP"). El Paso Acorn ("EPA") proposes to serve Socorro, Texas. Life Challenge International ("LCI") would serve Chaparral, New Mexico. CMEP and Arms each claim to be eligible for a fair distribution preference in connection with their proposed service to Horizon City.<sup>50</sup> LCI, EPA, Wine, and SFOP do not and, therefore, are eliminated. Although IJMRI certifies that it is not eligible for a fair distribution preference it cannot be eliminated because IJMRI also proposes to serve Horizon City and no applicant for a different community is entitled to a preference. Accordingly, the three applicants for Horizon City will proceed to a point hearing.

59. CMEP and Arms each certify that they are entitled to three points as an established local applicant. IJMRI does not. Each applicant claims to be entitled to two points for diversity of ownership. However, Arms provides no documentation to support its claim. Accordingly, IJMRI and CMEP will receive two points each, and Arms will not receive any points under this criterion. No applicant claims to be entitled to any points as a statewide network. With respect to technical parameters, IJMRI's proposed 60 dBu contour would encompass 841 square kilometers with a population of 49,482. CMEP's proposed 60 dBu contour would encompass 661 square kilometers with a population of 72,627. Arms' proposed 60 dBu contour would encompass 998 square kilometers with a population of 115,297. Arms is eligible for one point under the best technical proposal criterion because it proposes to serve at least ten percent more area and population than the next best area proposal of IJMRI and the next best population proposal of CMEP. Accordingly, IJMRI is credited with a total of two points, CMEP with a total of five points, and Arms with a total of four points. CMEP is the tentative selectee is Group 431.

60. **Group 437.** This group consists of five mutually exclusive applications for three different communities. Piedmont Community Services ("PCS") and Solid Foundation Broadcasting Corporation ("SFB") each propose to serve Milton, North Carolina. Victor Broadcasting, Inc. ("Victor") and God's Final Call and Warning, Inc. ("GFCW") each propose to serve Danville, Virginia. Solid Rock Christian Schools ("SRCS") would serve Lynchburg, Virginia. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. PCS, SFB, and Victor claim to be eligible for a fair distribution preference.<sup>51</sup>

<sup>50</sup> See CMEP and Arms Applications, Questions III(1), III(2), and associated exhibits. The applicants claim to provide a new aggregated first and second NCE service to the following population within their respective 60 dBu contours: CMEP to 7,544 of 72,627 people; and Arms to 11,537 of 115,279 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>51</sup> See PCS, SFB, and Victor Applications, Questions III(1), III(2), and associated exhibits. PCS's 60 dBu contour encompasses 109,218 people and its claimed aggregated first and second service is 56,750 people. SFB's contour encompasses 147,833 people and its claimed aggregated first and second service is 63,190 people. Victor's contour encompasses 105,003 people and its claimed aggregated first and second service is 57,077 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.

GFCW and SRCS do not and, thus, are eliminated. No remaining applicant claims to be eligible for a preference based on new first service alone. Accordingly, we consider the applicants' aggregated first and second NCE service. PCS would provide aggregated first and second service to 56,750 people (2,751 first service plus 53,999 second service). SFB would provide such service to 63,190 people (7,050 first service plus 56,140 second service). Victor would provide such service to 57,077 people (2,788 first service plus 54,299 second service). Victor is eliminated because SFB's proposal for a different community would serve at least 5,000 more people. PCS cannot be eliminated. Although PCS also proposes to serve at least 5,000 fewer people than SFB, each proposes to serve the community of Milton. Accordingly, PCS and SFB will proceed to a point hearing.

61. PCS claims three points as an established local applicant. SFB does not. PCS and SFB each certify that they are entitled to two points for diversity of ownership. However, PCS does not support its diversity claim with governing documents requiring diversity to be maintained. Accordingly, SFB will receive two points and PCS will not receive any points under this criterion. Neither applicant claims to be entitled to any points as a statewide network. With respect to technical parameters, PCS's proposed 60 dBu contour would encompass 2,436 square kilometers with a population of 109,218. SFB's proposed 60 dBu contour would encompass 3,967 square kilometers with a population of 147,833. SFB is eligible for two points under the best technical proposal criterion because it proposes to serve at least 25 percent more area and population than PCS. Accordingly, PCS is credited with a total of three points and SFB is credited with a total of four points. SFB is the tentative selectee in Group 437.

62. **Group 440.** This group consists of five applications to serve three different communities. Three applicants propose to serve Brattleboro, Vermont: Vinikoor Family Foundation, Inc. ("Vinikoor"); Vermont Public Radio ("VPR"); and The Positive Radio Network ("Positive"). Granite State Educational Fellowship ("GSEF") proposes to serve Hinsdale, New Hampshire. Franklin County Christian Ministries ("Franklin") proposes to serve Winchester, New Hampshire. VPR claims to be eligible for a fair distribution preference.<sup>52</sup> GSER and Franklin do not and, therefore, are eliminated. Although Vinikoor and Positive certify that neither is eligible for a fair distribution preference neither can be eliminated because both Vinikoor and Positive propose to serve Brattleboro, the same community as VPR, and no applicant for a different community is entitled to a preference. Accordingly, the three applicants for Brattleboro will proceed to a point hearing.

63. None of the Brattleboro applicants claim to be eligible for any points as an established local applicant. Only Vinikoor claims to be entitled to two points for diversity of ownership. However, Vinikoor provides no support for its diversity claim. Accordingly, none of the applicants will receive any points under this criterion. No applicant claims to be entitled to any points as a statewide network. With respect to technical parameters, Vinikoor's proposed 60 dBu contour would encompass 578 square kilometers with a population of 26,062. VPR's proposed 60 dBu contour would encompass 1,740 square kilometers with a population of 60,368. PRN's proposed 60 dBu contour would encompass 870 square kilometers with a population of 41,042. VPR is eligible for two points under the best technical proposal criterion because it proposes to serve at least 25 percent more area and population than the next best proposal of PRN. Accordingly, VPR is credited with a total of 2 points, and PRN and Vinikoor are not credited with any points. VPR is the tentative selectee is Group 440.

64. **Group 441.** This group is comprised of eleven applications proposing service to six different communities in Washington. Four applicants propose to serve Marysville: Calvary Chapel of Marysville ("CCM"), Family Worship Center Church, Inc. ("FWCC"), Memorial Community Church

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<sup>52</sup> See VPR Application, Questions III(1), III(2), and associated exhibits. VPR's 60 dBu contour encompasses 60,368 people and its claimed aggregated first and second service is 16,096 people. Thus, VPR 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.

(“Memorial”), and American Educational Broadcasting, Inc. (“AEB”). KSER Foundation (“KSER”) and Serviceberry Institute (“SI”) each propose to serve Freeland. Les Seraphim (“LS”) and Harvest Time Apostolic Ministries (“Harvest”) each propose to serve Quilcene. Sacred Heart Radio, Inc. (“SHR”) proposes to serve Everett. Friends of KEXP (“KEXP”) proposes to serve Clinton. Board of Trustees of Skagit Valley College (“Skagit”) proposes to serve Smokey Point. KSER, LS, SI, and Skagit claim to be eligible for a fair distribution preference.<sup>53</sup> CCM, FWCC, SHR, Memorial, KEXP, Harvest and AEB do not and, accordingly, are eliminated. Three of the remaining four applicants claim to be eligible for a preference based on first service: KSER to 12,546 people, LS to 3,218 people, and SI to 24,566 people. Skagit certifies that it is not eligible for a first service preference because it would provide first service to less than ten percent of its proposed population. Accordingly, Skagit is eliminated. LS also is eliminated because it proposes to serve at least 5,000 people fewer than KSER’s application for a different community. The remaining two applicants, KSER and SI, each propose to serve Freeland. Accordingly, KSER and SI will proceed to a point hearing.

65. KSER and SI claim three points each as established local applicants. Each claims two points for diversity of ownership, and neither claims points as a statewide network. With respect to technical parameters, KSER’s proposed 60 dBu contour encompasses 1,805 square kilometers with a population of 62,021. SI’s proposed 60 dBu contour encompasses 344 square kilometers with a population of 39,737. KSER is eligible for two points under the best technical proposal criterion because it proposes to serve at least 25 percent more area and population than SI. Accordingly, KSER is credited with a total of seven points and SI is credited with a total of five points. KSER is the tentative selectee in Group 441.

66. **Group 443.** This group consists of eight mutually exclusive applications proposing service to seven communities in Washington. The KBOO Foundation (“KBOO”) and Prosser Seventh-Day Adventist Church (“PSDA”) propose service to Benton City. Waymaker Ministries (“WM”) and Fire Media Corporation (“FMC”) propose service to West Richland. The other applicants are Pacific Northwest Tejano Music Association (“PNTM”) for Sunnyside, Riverview Baptist Christian Schools (“Riverview”) for Grandview, Northwest Communities Education Center (“NCEC”) for Prosser, and Iglesia Jesucristo es Mi Refugio de Austin, Inc. (“IJMR Austin”) for Ruby. WM, Riverview, NCEC, FMC, KBOO, and PSDA claim to be eligible for a fair distribution preference.<sup>54</sup> PNTM and IJMR Austin do not and, accordingly, are eliminated when compared to applicants for other communities. None of the remaining applicants claims to be eligible for a preference based on first service alone. They claim aggregated first and second service to the following populations: WM to 8,533 people (no first service plus 8,533 second service), Riverview to 5,918 people (no first service plus 5,918 second service), NCEC to 11,072 people (no first service plus 11,072 second service), FMC to 8,258 people (no first service plus 8,258 second service), KBOO to 8,077 people (no first service plus 8,077 second service), and PSDA to

<sup>53</sup> See KSER, LS, SI, and Skagit Applications, Questions III(1), III(2), and associated exhibits. KSER’s 60 dBu contour encompasses 62,021 people and its claimed aggregated first and second service is 28,705 people. LS’s contour encompasses 17,075 people and its claimed aggregated first and second service is all 17,075 people. SI’s contour encompasses 39,737 people and its claimed aggregated first and second service is 24,566 people. Skagit’s contour encompasses 236,621 people and its claimed aggregated first and second service is 28,423 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>54</sup> See WM, Riverview, NCEC, FMC, KBOO, and PSDA Applications, Questions III(1), III(2), and associated exhibits. The applicants claim to provide a new aggregated first and second NCE service to the following population within their respective 60 dBu contours: WM to 8,533 of 74,101 people; Riverview to 5,918 of 47,183 people; NCEC to 11,072 of 65,132 people; FMC to 8,258 of 60,583 people; KBOO to 8,077 of 60,289 people; and PSDA (using the least favorable numbers provided, as explained in paragraph 13 *supra*) to 8,090 of 72,908 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.

8,090 people (no first service plus 8,090 second service). These claims are comparable because no applicant proposes new NCE service to at least 5,000 people more than the next best applicant. Accordingly, WM, Riverview, NCEC, FMC, KBOO, and PSDA will proceed to a point hearing.

67. WM, NCEC, and PSDA claim three points each as established local applicants. Riverview, FMC, and KBOO do not. WM, Riverview, NCEC, FMC and PSDA claim two points each for diversity of ownership. However, WM, FMC and PSDA do not support their claims. KBOO certifies that it is not entitled to any points under this criterion. Accordingly, only Riverview and NCEC will be credited with two points for diversity of ownership. No applicant in this group claims points as a statewide network. With respect to technical parameters, WM's proposed 60 dBu contour encompasses 2,046 square kilometers with a population of 74,101. Riverview's proposed 60 dBu contour encompasses 757 square kilometers with a population of 47,183. NCEC's proposed 60 dBu contour encompasses 4,409 square kilometers with a population of 65,132. FMC's proposed 60 dBu contour encompasses 2,635 square kilometers with a population of 60,583. KBOO's proposed 60 dBu contour encompasses 2,641 square kilometers with a population of 60,289. PSDA's proposed 60 dBu contour encompasses 3,157 square kilometers with a population of 73,461. No applicant qualifies for any points under the best technical proposal criterion because none proposes both the largest area and population. Accordingly, NCEC is credited with a total of five points, WM and PSDA with three points each, Riverside with two points, and FMC and KBOO are not credited with any points. NCEC therefore is the tentative selectee in Group 443.

68. **Group 444A.**<sup>55</sup> This group consists of three mutually exclusive applications proposing service to communities in Michigan. Korkee, Inc. ("Korkee") has two applications in the group, one for Munising and the other for Escanaba. Clean Air Broadcasting Corporation ("Clean Air") also proposes to serve Escanaba. Clean Air certifies that it is eligible for a fair distribution preference.<sup>56</sup> Korkee does not. Korkee's application for Munising is eliminated when compared to Clean Air's application for a different community. Korkee's Escanaba application cannot be eliminated because it proposes service to the same community as Clean Air and there is no applicant for a different community that is eligible for a fair distribution preference. Accordingly, the two Escanaba applications will proceed to a point hearing.

69. Each applicant certifies that it would not qualify for any points as an established local applicant. Each claims two points for diversity of ownership. Korkee does not support its diversity claim with a corporate document requiring diversity to be maintained. Accordingly, Clean Air will be awarded two points and Korkee will not be credited with any points under this criterion. Neither applicant claims points as a statewide network. With respect to technical parameters, Clean Air's proposed 60 dBu contour would encompass 4,409 square kilometers with a population of 43,483. Korkee provides no area and population numbers concerning its technical proposal. In such circumstances, it is our practice to assign a value of zero to an applicant's proposed population and area and thus, in two-applicant comparisons, to credit the applicant providing such numbers with the maximum credit of two points.<sup>57</sup> Thus, Clean Air qualifies for two points under the best technical proposal criterion. Accordingly, Korkee has not been

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<sup>55</sup> Group 444 was bifurcated by a settlement in which one application was dismissed and another became a singleton. The staff previously announced a tentative selectee in Group 444B based on fair distribution principles. *See Threshold Fair Distribution Analyses of 28 Mutually Exclusive Groups of Applications*, 24 FCC Rcd 12390 (2009).

<sup>56</sup> *See* Clean Air Application, Questions III(1), III(2), and associated exhibits. Clean Air's 60 dBu contour encompasses 43,483 people and its claimed aggregated first and second service is 41,394 people. Thus, 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.

<sup>57</sup> *See supra* n.42.

credited with any points, and Clean Air has been credited with a total of four points. Clean Air is the tentative selectee in Group 444A.

70. **Group 445.** This group consists of nine mutually exclusive applications proposing service to different communities in Wisconsin. The applicants are Liberty and Freedom, Inc. (“LFI”) for Hillsboro, TDL Broadcasting, Inc. (“TDL”) for Coloma, Pierced Communications, Inc. (“Pierced”) for Cross Plains, Cornerstone Community Radio, Inc. (“CCR”) for Wisconsin Dell, Crossfire, Inc. (“Crossfire”) for Oakdale, State of Wisconsin – Educational Communications Board (“Wisconsin Board”) for Adams, Folklore Farm Village (“FFV”) for Ridgeway, Tomah Seventh-Day Adventist Church (“TSDA”) for Elroy, and Lighthouse Christian Fellowship (“Lighthouse”) for Reedsburg. Seven applicants claim eligibility for a fair distribution preference.<sup>58</sup> FFV and Lighthouse do not and, accordingly, are eliminated. Each of the remaining applicants claim to be eligible for a preference based on first service: LFI to 4,611 people, TDL to 7,957 people, Pierced to 8,788 people, CCR to 7,824 people, Crossfire to 9,941 people, Wisconsin Board to 9,270 people, and TSDA to 3,435 people. These claims are comparable because none would serve at least 5,000 people more than the next best proposal. Accordingly, we will consider the applicants’ aggregated first and second NCE service.

71. LFI would provide aggregated first and second service to 6,890 people (4,611 first service plus 2,279 second service); TDL to 37,715 people (7,957 first service plus 29,758 second service); Pierced to 11,657 people (8,788 first service plus 2,869 second service); CCR to 47,315 people (7,824 first service plus 39,491 second service); Crossfire to 18,071 people (9,941 first service plus 8,130 second service); Wisconsin Board to 44,289 people (9,270 first service plus 35,019 second service); and TSDA to 18,686 people (3,435 first service plus 15,251 second service). LFI, TDL, Pierced, Crossfire, and TSDA are eliminated because Wisconsin Board’s next best proposal for a different community would serve at least 5,000 more people. The claims of Wisconsin Board and CCR are, however, comparable because neither would serve at least 5,000 more people than the other. Accordingly, Wisconsin Board and CCR will proceed to a point hearing.

72. Wisconsin Board claims that it qualifies for three points as an established local applicant. CCR does not. CCR claims two points for diversity of ownership. Wisconsin Board does not. Wisconsin Board claims two points as a statewide network. CCR certifies that it is not eligible for points under this criterion. With respect to technical parameters, Wisconsin Board’s proposed 60 dBu contour would encompass 4,080 square kilometers with a population of 51,527. CCR’s proposed 60 dBu contour would encompass 2,835 square kilometers with a population of 76,433. Neither applicant qualifies for any points under the best technical proposal criterion because neither proposes to serve the largest area and population. Accordingly, Wisconsin Board has been credited with a total of five points, and CCR has been credited with a total of two points. Wisconsin Board is the tentative selectee in Group 445.

73. **Group 447.** The four applicants in Group 447 would serve different West Virginia communities. Pensacola Christian College, Inc. (“PCC”) proposes to serve Kingston. The Synar Foundation, Inc. (“Synar”) proposes to serve Beckley. The St. Thomas More Catholic Lawyers Society (“Society”) proposes to serve Montgomery. Clay County Communications, Ltd. (“CCCL”) would serve

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<sup>58</sup> See LFI, TDL, Pierced, CCR, Crossfire, Wisconsin Board, and TSDA Applications, Questions III(1), III(2), and associated exhibits. The applicants claim to provide a new aggregated first and second NCE service to the following population within their respective 60 dBu contours: LFI to 6,890 of 7,949 people; TDL to 37,715 of 39,925 people; Pierced to 11,657 of 13,325 people; CCR to 47,315 of 76,433 people; Crossfire to all 18,071 of 18,071 people; Wisconsin Board to all 44,289 of 44,289 people; and TSDA to 18,686 of 22,490 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.

Clay. PCC, Synar, and Society claim to be eligible for a fair distribution preference.<sup>59</sup> CCCL also claims to be eligible for a fair distribution preference but provides only a map with no numbers. CCCL has provided no basis on which to compare its application to others and, thus, is eliminated. The remaining applicants each certify that they are not eligible for a preference based on first service alone, and rely solely on their respective aggregated first and second service totals. Only Society's claim appears reasonably accurate. Society claims it would provide aggregated first and second service to 16,736 people (474 first service plus 16,262 second service). PCC claims that it would provide aggregated first and second service to 70,127 people (181 first service plus 69,946 second service), but PCC fails to consider service authorized to WJJJ, WPWV, WXAF, and WVPN. Had PCC taken those stations into account its new service claim would have been inferior to the next best applicant by at least 5,000 people. Accordingly, PCC is eliminated. Our consideration of Synar's claim reveals that its reported second service is overstated as well. Using the least favorable numbers provided as explained in paragraph 13 *supra*, Synar claims it would provide aggregated first and second service to 18,812 people (no first service plus 18,812 second service). Synar's actual second service is approximately 14,000 people. Synar's corrected second service is within 5,000 people of Society's claim. The fair distribution preferences of Synar and Society are, therefore, comparable and those two applicants will, thus, proceed to a point hearing.

74. Synar and Society claim three points each as established local applicants and two points each for diversity of ownership. Synar's diversity claim is based on a pledge to divest LPFM station WQAZ-LP, Edmund, West Virginia. Neither applicant claims points as a statewide network. With respect to technical parameters, Synar's proposed 60 dBu contour would encompass 5,756 square kilometers with a population of 164,716. Society's proposed 60 dBu contour would encompass 4,256 square kilometers with a population of 141,945. Synar is eligible for one point under the best technical proposal criterion because it proposes to serve at least 10 percent more area and population than Society. Accordingly, Synar is credited with a total of six points and Society is credited with a total of five points. Synar is the tentative selectee in Group 447.

#### IV. NEXT STEPS

75. **Acceptability Studies and Filing of Petitions.** The staff has examined the applications of each tentative selectee for application defects.<sup>60</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.

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<sup>59</sup> See Society, PCC, and Synar Applications, Questions III(1), III(2), and associated exhibits. Society's contour encompasses 141,945 people and its claimed aggregated first and second service is 16,736 people. Society claims to 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. According to PCC, its 60 dBu contour encompasses 96,718 people and its claimed aggregated first and second service is 70,127 people. Synar asserts that its contour encompasses 164,716 people and its claimed aggregated first and second service is 18,812 people (using the least favorable numbers provided, as explained in paragraph 13 *supra*). However, as discussed in the text below, the claims of both PCC and Synar are erroneous. Although we find PCC's and Synar's claims overstated, we conclude that, like Society, 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>60</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).



76. 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>61</sup>

77. **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.

78. 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>62</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>63</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.

79. **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

80. 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>64</sup>

<sup>61</sup> See *id.* § 1.106 (a) (1). See also *Patrick J. Vaughn, Esq.*, Letter, 22 FCC Rcd 11165 (MB 2007).

<sup>62</sup> See, e.g. *Central Florida Educational Foundation, Inc.*, Letter, 23 FCC Rcd 1695 (MB 2008) (staff dismissal of defective application tentatively selected in a point hearing, and staff award of permit on a non-comparative basis to only remaining acceptable applicant).

<sup>63</sup> See generally *NCE Omnibus*, 22 FCC Rcd at 6162 n.230 (2007) (standards for staff evaluation of petitions).

<sup>64</sup> See 5 U.S.C. §§ 702, 704, 706; 47 U.S.C. §§ 309(d), 402(b), 405; 47 C.F.R. §§ 1.106-08, 73.7004. In cases that involve separate mutually exclusive groups but present common issues, the petitions or appeals may be filed jointly or may be consolidated at the discretion of the Commission or a reviewing court. See, e.g., FED. R. APP. P. 3(b).

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.

81. **Group 399.** Accordingly, IT IS ORDERED, That Kansas Catholic Educational Radio Corporation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Caddo, Oklahoma and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Bright Light Broadcasting, Inc. (File No. BNPED-20071017DKZ) and Cameron University (File No. BNPED-20071018AUN), and TO GRANT the application of Kansas Catholic Educational Radio Corporation (File No. BNPED-20071016AIE) 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.

82. **Group 401.** Accordingly, IT IS ORDERED, That Community Presbyterian Church of Waldport is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Toledo, 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 Firebare, Inc. (File No. BNPED-20071015AKI), Confederated Tribes of Siletz Indians of Oregon (File No. BNPED-20071019AZQ), Winds of Praise Broadcasting (File No. BNPED-20071012AIR), Oregon State Board of Higher Education for the University of Oregon (File No. BNPED-20071012API), Better Life Television, Inc. (File No. BNPED-20071022AQE), and Educational Broadcast Service (File No. BNPED-20071022BGO), and TO GRANT the application of Community Presbyterian Church of Waldport (File No. BNPED-20071018ACY) 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.

83. **Group 403.** Accordingly, IT IS ORDERED, That Bible Broadcasting Network, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Leesport, Pennsylvania and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Bridgebuilders International Leadership Network (File No. BNPED-20071022AKK), Berks Community Television, Inc. (File No. BNPED-20071019AGT), and Berks Radio Association (File No. BNPED-20071019BFI), and TO GRANT the application of Bible Broadcasting Network, Inc. (File No. BNPED-20071019APD) CONDITIONED UPON compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system and 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.

84. **Group 406.** Accordingly, IT IS ORDERED, That Invisible Allies Ministries is TENTATIVELY SELECTED to be awarded a permit to construct a new NCE FM station at Beech Creek, 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 applications of Alabaster, Inc. (File No. BNPED-20071015AFY) and Lock Haven Seventh-Day Adventist Church (File No. BNPED-20071022AZD), and TO GRANT the application of Invisible Allies Ministries (File No. BNPED-20071019AGL) 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.

85. **Group 408.** Accordingly, IT IS ORDERED, That Four Rivers Community Broadcasting Corp. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Spring Grove, Pennsylvania and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Redeemer Broadcasting, Inc. (File No. BNPED-20071018BBB) City of York (File No. BNPED-20071019BDD), NC Friends Broadcasting, Inc. (File No. BNPED-20071022BBQ), WITF, Inc. (File No. BNPED-20071022BDR), and York Seventh-Day Adventist Church (File No. BNPED-20071022BAD), and TO GRANT the application of Four Rivers Community Broadcasting Corp. (File No. BNPED-20071018AXJ) 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.

86. **Group 409.** Accordingly, IT IS ORDERED, That Vieques Youth Leadership Initiative, Inc. is TENTATIVELY SELECTED to be awarded a construction permits for a new NCE FM station in Vieques, Puerto Rico 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 Committee for the Rescue and Development of Vieques (File No. BNPED-20071018AWU), Ministerio Educativo Marcos 16:15 (File No. BNPED-20071018AOP), Puerto Rico Public Broadcasting Corporation (File No. BNPED-20071022BVN), Hispanic Broadcast System, Inc. (File Nos. BNPED-20071019ADA and 20071019ADE), Tillandsia Radio Outreach, Inc. (File No. BNPED-20071018ARD), Texas Pelican Media (File No. BNPED-20071022ALQ), Optima Enrichment, Inc. (File No. BNPED-20071022AUJ), Family Educational Association, Inc. (File No. BNPED-20071018BBD), and Crucian Educational Nonprofit Group, Inc. (File No. BNPED-20071019AZD), and TO GRANT the applications of Vieques Youth Leadership Initiative, Inc. (File No. BNPED-20071019AZH) 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.

87. **Group 410.** Accordingly, IT IS ORDERED, That Academy of St. Therese is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Pawcatuck, Connecticut and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Calvary Chapel of Southeastern Connecticut (File No. BNPED-20071017AAY), Sacred Heart University, Inc. (File Nos. BNPED-20071022BKP and 20071022BLE), and Rhode Island Public Radio (File No. BNPED-20071022AKO), and TO GRANT the application of Academy of St. Therese (File No. BNPED-

20071022BBL) 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.

88. **Group 412.** Accordingly, IT IS ORDERED, That Community Broadcast Services and St. Joseph's Catholic School, Inc. ARE TENTATIVELY SELECTED to be awarded construction permits ON A TIMESHARING BASIS for respective new NCE FM stations in Laurens, South Carolina and Gray Court, South Carolina and their 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 tentative selectees' applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Solid Foundation Broadcasting Corporation (File No. BNPED-20071015AGW), Greenwood Broadcasters Ltd, Inc. (File No. BNPED-20071019API), Benedict College (File No. BNPED-20071022BGU), Community Impact Foundation, Inc. (File No. BNPED-20071012ADK), Lost Boys Broadcast Network (File No. BNPED-20071017AGT), Richburg Educational Broadcasters, Inc. (File No. BNPED-20071018APR) and Radio Training Network, Inc. (File No. BNPED-20071022BOP); TO PROVIDE the tentative selectees a ninety (90)-day period in which to reach a timesharing agreement among themselves; and, pursuant to an acceptable agreement, TO GRANT the applications of Community Broadcast Services (File No. BNPED-20071018AMP) and St. Joseph's Catholic School, Inc. (File No. BNPED-20071022BHF), CONDITIONED UPON the selectees' 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. If the tentative selectees 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.

89. **Group 413.** Accordingly, IT IS ORDERED, That Spirit Broadcasting Group, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Saluda, South 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 Friends of Hometown Radio (File No. BNPED-20071019AIF), Benedict College (File No. BNPED-20071022BHH), JVH Broadcasting, Inc. (File No. BNPED-20071022BNR), Radio Training Network, Inc. (File No. BNPED-20071022BQQ) and Dayspring Ministries of Concord Baptist Church (File No. BNPED-20071017AAC), and TO GRANT the application of Spirit Broadcasting Group, Inc. (File No. BNPED-20071015AKL) 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.

90. **Group 414.** Accordingly, IT IS ORDERED, That Faith Cathedral Fellowship, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in St. George, South 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 Friends of Hometown Radio (File No. BNPED-20071019AHC), Radio Training Network, Inc. (File No. BNPED-20071022AGA), Cultural Renewal Radio, UA (File No. BNPED-20071022AMG), Spirit Broadcasting

Group, Inc. (File No. BNPED-20071015AKQ), and Life Baptist Church (File No. BNPED-20071016AJQ), and TO GRANT the application of Faith Cathedral Fellowship, Inc. (File No. BNPED-20071022BPJ) 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.

91. **Group 416.** Accordingly, IT IS ORDERED, That South Dakota Board of Directors for Educational Telecommunications is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Watertown, South Dakota 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 Worship Center Church, Inc. (File No. BNPED-20071017AAU), and TO GRANT the application of South Dakota Board of Directors for Educational Telecommunications (File No. BNPED-20071017ACN) 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.

92. **Group 417.** Accordingly, IT IS ORDERED, That South Dakota School of Mines and Technology, Three Angels Seventh-Day Adventist Church, and Rapid City Columbian Club, Inc. are TENTATIVELY SELECTED to be awarded construction permits ON A TIMESHARING BASIS for respective new NCE FM stations in Rapid City, South Dakota and Box Elder, South Dakota and their 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 tentative selectees' applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Wilbur Gospel Communications and Foundation (File No. BNPED-20071015AEY), Saidnewsfoundation (File No. BNPED-20071017AIW), Tightrope Broadcasting, Inc. (File No. BNPED-20071022BAA), The Positive Radio Network (File No. BNPED-20071012AJT), and St. Paul Cultural Broadcasting, Inc. (File No. BNPED-20071022AKW); TO PROVIDE the tentative selectees a ninety (90)-day period in which to reach a timesharing agreement among themselves; and, pursuant to an acceptable agreement, TO GRANT the applications of South Dakota School of Mines and Technology (File No. BNPED-20071018AML), Three Angels Seventh-Day Adventist Church (File No. BNPED-20071022BCG), and Rapid City Columbian Club, Inc. (File No. BNPED-20071022BVA) 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 tentative selectees 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.

93. **Group 418.** Accordingly, IT IS ORDERED, That Calvary Chapel of Knoxville is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Oak Ridge, Tennessee 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 Caleb Radio Network (File No. BNPED-20071022BSA), Victor Broadcasting, Inc. (File No. BNPED-20071012ABJ), Appalachian Performing Arts Institute, Inc. (File No. BNPED-20071012AKE), Community Radio, Inc. (File No. BNPED-20071012AOG), Cookeville Christian Broadcasting (File No. BNPED-20071018AIC), Roane State Community College (File No. BNPED-20071022AEM), Rural Tennessee Educational Foundation (File No. BNPED-20071022BCA), Immanuel Broadcasting Network (File No. BNPED-20071019BDB), and Iglesia Jesucristo es Mi Refugio de San Antonio, Inc. (File No. BNPED-

20071022ABE), and TO GRANT the application of Calvary Chapel of Knoxville (File No. BNPED-20071022BBD) 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 PROVIDED THAT pursuant to a waiver of Section 73.860(a) of the Commission's Rules, 47 C.F.R. § 73.860(a), Calvary Chapel of Knoxville must divest or surrender its license for LPFM station WIAM-LP, Knoxville, Tennessee prior to commencement of program tests of the full service NCE FM station.

94. **Group 421.** Accordingly, IT IS ORDERED, That Truth and Education Corp. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Port Arthur, 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 Centro Cristiano de Vida Eterna (File No. BNPED-20071018ABT), Vision Celestial (File No. BNPED-20071019ANG), Family Life Broadcasting, Inc. (File No. BNPED-20071022AFT), KMZD Radio, Inc. (File No. BNPED-20071022AOR), Houston Christian Broadcasters, Inc. (File No. BNPED-20071022ASY), and Grace Fellowship Church (File No. BNPED-20071022BGI), and TO GRANT the application of Truth and Education Corp. (File No. BNPED-20071012ADO) 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.

95. **Group 423.** Accordingly, IT IS ORDERED, That La Promesa Foundation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Albany, 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 Gospel American Network (File No. BNPED-20071018AOU), Oasis of Faith (File No. BNPED-20071019ACO), CSSI Non-Profit Educational Broadcasting Corp. (File No. BNPED-20071012AOK), and Home Town Communications, Inc. (File No. BNPED-20071018ANW), and TO GRANT the application of La Promesa Foundation (File No. BNPED-20071019ACW) 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.

96. **Group 426.** Accordingly, IT IS ORDERED, That Shiner Catholic School is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Shiner, 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 Austin County Community Communications (File No. BNPED-20071015ADV), Centro Cristiano de Vida Eterna (File No. BNPED-20071018ABR), The Bridge Church, Inc. (File No. BNPED-20071018AZY), and Gospel American Network (File No. BNPED-20071019AEP), and TO GRANT the application of Shiner Catholic School (File No. BNPED-20071022AEW) 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.

97. **Group 428.** Accordingly, IT IS ORDERED, That Texas Public Radio is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Liano, 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 application of Arts for the Community, Inc. (File No. BNPED-20071015AFN), and TO GRANT the application of Texas Public Radio (File No. BNPED-20071016AIO) 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.

98. **Group 430.** Accordingly, IT IS ORDERED, That Marfa Public Radio is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Marfa, 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 La Promesa Foundation (File No. BNPED-20071019AGJ), Hispanic Outreach Ministry, Inc. (File Nos. BNPED-20071022ANN, 20071022ANO, and 20071022AST) Radio Bilingue, Inc. (File No. BNPED-20071016AEY), Houston Christian Broadcasters, Inc. (File No. BNPED-20071018AJM), Texas Community Broadcast Association, Inc. (File No. BNPED-20071018BEA), and Templo Piedra Angular (File No. BNPED-20071019AWA), and TO GRANT the application of Marfa Public Radio (File No. BNPED-20071017AEC) 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.

99. **Group 431.** Accordingly, IT IS ORDERED, That Christian Ministries of El Paso, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Horizon City, Texas and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Iglesia Jesucristo es Mi Refugio, Inc. (File No. BNPED-20071017AII), Open Arms Community of El Paso (File No. BNPED-20071022BGV), New Wine Church of San Antonio (File No. BNPED-20071022ACO), Sin Fronteras Organizing Project (File No. BNPED-20071022BNM), El Paso Acorn (File No. BNPED-20071019ASP), and Life Challenge International (File No. BNPED-20071016AFO), and TO GRANT the application of Christian Ministries of El Paso, Inc. (File No. BNPED-20071019AHM) 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.

100. **Group 437.** Accordingly, IT IS ORDERED, That Solid Foundation Broadcasting Corporation 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 Piedmont Community Services (File No. BNPED-20071012AJN), Victor Broadcasting, Inc. (File No.

BNPED-20071012ACN), God's Final Call and Warning, Inc. (File No. BNPED-20071012AIF), and Solid Rock Christian Schools (File No. BNPED-20071018AUK), and TO GRANT the application of Solid Foundation Broadcasting Corporation (File No. BNPED-20071015AGV) 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.

101. **Group 440.** Accordingly, IT IS ORDERED, That Vermont Public Radio is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Brattleboro, Vermont 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 Vinikoor Family Foundation, Inc. (File No. BNPED-20071018AJY), The Positive Radio Network (File No. BNPED-20071022BFO), Granite State Educational Fellowship (File No. BNPED-20071019AUH), and Franklin County Christian Ministries (File No. BNPED-20071019AXT), and TO GRANT the application of Vermont Public Radio (File No. BNPED-20071018BCF) 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.

102. **Group 441.** Accordingly, IT IS ORDERED, That KSER Foundation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Freeland, Washington and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Calvary Chapel of Marysville (File No. BNPED-20071012ASW), Family Worship Center Church, Inc. (File No. BNPED-20071017AAP), Memorial Community Church (File No. BNPED-20071019AUN), American Educational Broadcasting, Inc. (File No. BNPED-20071022BPG), Serviceberry Institute (File No. BNPED-20071022AEC), Les Seraphim (File No. BNPED-20071018ANR), Harvest Time Apostolic Ministries (File No. BNPED-20071022AIA), Sacred Heart Radio, Inc. (File No. BNPED-20071018AZR), Friends of KEXP (File No. BNPED-20071019AZX), and Board of Trustees of Skagit Valley College (File No. BNPED-20071022AIW), and TO GRANT the application of KSER Foundation (File No. BNPED-20071016AAQ) 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.

103. **Group 443.** Accordingly, IT IS ORDERED, That Northwest Communities Education Center is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Prosser, Washington 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 The KBOO Foundation (File No. BNPED-20071019ASA), Prosser Seventh-Day Adventist Church (File No. BNPED-20071022BRO), Waymaker Ministries (File No. BNPED-20071015ACJ), Fire Media Corporation (File No. BNPED-20071019AMX), Pacific Northwest Tejano Music Association (File No. BNPED-20071015AAF), Riverview Baptist Christian Schools (File No. BNPED-20071018ACP), and



Iglesia Jesucristo es Mi Refugio de Austin, Inc. (File No. BNPED-20071022ACT), and TO GRANT the application of Northwest Communities Education Center (File No. BNPED-20071018AQJ) 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.

104. **Group 444A.** Accordingly, IT IS ORDERED, That Clean Air Broadcasting Corporation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Escanaba, Michigan and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days 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 Korkee, Inc. (File Nos. BNPED-20071017AJH and 20071017AJS), and TO GRANT the application of Clean Air Broadcasting Corporation (File No. BNPED-20071018AKU) 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.

105. **Group 445.** 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 Adams, Wisconsin 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 and Freedom, Inc. (File No. BNPED-20071012AJL), TDL Broadcasting, Inc. (File No. BNPED-20071015ABA), Pierced Communications, Inc. (File No. BNPED-20071015ABQ), Cornerstone Community Radio, Inc. (File No. BNPED-20071017AFX), Crossfire, Inc. (File No. BNPED-20071018AMV), Folklore Farm Village, Inc. (File No. BNPED-20071019AMG), Tomah Seventh-Day Adventist Church (File No. BNPED-20071022BFM), and Lighthouse Christian Fellowship (File No. BNPED-20071022BLF), and TO GRANT the application of State of Wisconsin – Educational Communications Board (File No. BNPED-20071018AXI) 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.

106. **Group 447.** Accordingly, IT IS ORDERED, That The Synar Foundation, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Beckley, West 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 Pensacola Christian College, Inc. (File No. BNPED-20071018BAB), The St. Thomas More Catholic Lawyers Society (File No. BNPED-20071022BAK), and Clay County Communications, Ltd. (File No. BNPED-20071022BME), and TO GRANT the application of The Synar Foundation, Inc. (File No. BNPED-20071022AHU) 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 PROVIDED THAT pursuant to a waiver of Section 73.860(a) of the Commission's Rules, 47 C.F.R. § 73.860(a), The Synar Foundation, Inc. must divest or surrender its license for LPFM station WQAZ-LP, Edmund, West Virginia prior to commencement of program tests of the full service NCE FM station.

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 claims, 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.