

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

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| In the Matter of  | ) |   |
|   | ) |   |
| Comparative Consideration of 37 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations filed in the February 2010 and October 2007 Filing Windows | ) | NCE Reserved Allotment Group Numbers 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34; NCE MX Group Numbers 328, 389, 393, 394, and 417 |
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**MEMORANDUM OPINION AND ORDER**

**Adopted: May 2, 2011**

**Released: May 3, 2011**

By the Commission:

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**I. BACKGROUND**

1. By this Memorandum Opinion and Order (“Order”), the Commission considers 37 groups of mutually exclusive applications for new or modified noncommercial educational (“NCE”) FM station construction permits.<sup>1</sup> The Commission resolves such conflicting NCE proposals by applying

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<sup>1</sup> Each application in Group 1 through Group 34 was filed during a filing window that was open from February 19, 2010, through February 26, 2010, for 67 existing, vacant FM allotments on Channels 221 through 300 that had been reserved for NCE use. See *Media Bureau Announces Filing Window for Vacant FM Allotments Reserved for Noncommercial Educational Use*, Public Notice, 24 FCC Rcd 12621 (MB 2009) (“Reserved Allotment Notice”); *Filing Window for Vacant FM Allotments Reserved for Noncommercial Educational Use Rescheduled to February 19-26, 2010*, Public Notice, 24 FCC Rcd 12952 (MB 2009). Each application in Group 328 through Group 417 was filed during a filing window that was open from October 12, 2007, through October 22, 2007, for FM reserved band (Channels 201-220) proposals. See *Media Bureau Announces NCE FM New Station and Major Change Filing Procedures for October 12-October 19, 2007 Window*, Public Notice, 22 FCC Rcd 15050 (MB 2007) (“Procedures Notice”); *Media Bureau to Extend Window for NCE FM New Station and Major Change Applications; Window Will Close on October 22, 2007*, Public Notice, 22 FCC Rcd 18680 (MB 2007).

comparative procedures codified in Part 73, Subpart K, of the Commission's Rules (the "Rules").<sup>2</sup> This Order uses a point system to tentatively select applications for grant and initiates a 30-day period for filing petitions to deny against the applicants tentatively selected.<sup>3</sup>

## II. NCE RESERVED FM ALLOTMENTS

2. Each application in Group 1 through Group 34 herein proposes to operate on an existing, vacant FM allotment on Channels 221 through 300 (the "non-reserved FM band") that has been reserved for NCE use.<sup>4</sup> The Commission reserves a non-reserved FM Band allotment if the petitioner successfully demonstrates that no reserved channel could be used without causing prohibited interference to (1) TV channel 6 stations, or (2) foreign broadcast stations.<sup>5</sup>

3. In the *NCE Second Report and Order* the Commission adopted a third test for channel reservation (the "third channel reservation standard").<sup>6</sup> Under the third channel reservation standard, a reservation proponent must demonstrate that (1) it is technically precluded from using a reserved band channel, and (2) it would provide a first and/or second NCE radio service to at least ten percent of the population within the 60 dBu (1 mV/m) contour of its proposed station, and that such population is at least 2,000 people.<sup>7</sup> The Commission specifically advised prospective NCE applicants that the first or second NCE service requirement remains applicable at the application stage.<sup>8</sup> Therefore, if the third channel reservation standard served as the basis for reservation of the allotment, applicants for that allotment must provide a first or second NCE service to at least ten percent of the population within the proposed station's service area and that population must be at least 2,000 people. Applications which fail to satisfy this requirement are eliminated and will not proceed to the point system analysis. Allotments

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

<sup>3</sup> *See id.* § 73.7004(b).

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

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

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

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

<sup>8</sup> *See NCE Second Report and Order*, 18 FCC Rcd at 6705 ("Reserved allotments will be conditioned on the construction and licensing of an NCE station that provides the requisite level of first and second NCE service. In the event that all applications for a reserved band allotment fail to propose such service, the allotment will become unreserved by operation of law and subject to the Commission's competitive bidding licensing procedures."). *See also* 47 C.F.R. § 73.202(a)(1)(ii).

reserved by means of the third channel reservation standard are identified in the point system determinations below.

### III. GENERAL NCE PROCEDURES

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

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

5. When mutually exclusive applications for permits to construct NCE FM stations propose to serve different communities, the Bureau determines whether grant of any of the applications would best further the fair, efficient, and equitable distribution of radio service among communities.<sup>13</sup> An NCE FM applicant is eligible to receive a Section 307(b) preference if it would provide, within the proposed

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<sup>9</sup> See 47 U.S.C. § 307(b).

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

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

<sup>12</sup> See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Notice of Proposed Rulemaking, 10 FCC Rcd 2877 (1995), *further rules proposed*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 21167 (1998), *rules adopted*, Report and Order, 15 FCC Rcd 7386 (2000) ("*NCE Order*"), *vacated in part on other grounds sub nom.*, *National Public Radio v. FCC*, 254 F.3d 226 (D.C. Cir. 2001), *clarified*, Memorandum Opinion and Order, 16 FCC Rcd 5074 ("*NCE MO&O*"), *Erratum*, 16 FCC Rcd 10549, *recon. denied*, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002) ("*NCE Reconsideration Order*"), *aff'd sub nom. American Family Ass'n v. FCC*, 365 F.3d 1156 (D.C. Cir. 2004) ("*American Family*"), *cert. denied*, 125 S.Ct. 634 (2004).

<sup>13</sup> See 47 U.S.C. § 307(b) ("In considering applications for licenses ... when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."); 47 C.F.R. § 73.7002(a). A Section 307(b) analysis is ordinarily conducted at the staff level because the Bureau has delegated authority to make Section 307(b) determinations in NCE cases. See *NCE Order*, 15 FCC 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.

station's 60 dBu contour, a first or second reserved band channel NCE aural service to at least ten percent of the population (in the aggregate), provided that such service is to at least 2,000 people.<sup>14</sup>

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

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

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

8. Second, two points are awarded for local diversity of ownership if the principal community contours of the applicant's proposed station and any other station in which any party to the

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

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

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

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

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

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

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

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

10. Fourth, an applicant that proposes the best technical proposal in the group (*i.e.*, proposes service to the largest population and area, excluding substantial areas of water) may receive up to two points. The applicant receives one point if its proposed service area *and* population are ten percent greater than those of the next best area and population proposals, or two points if both are 25 percent greater than those of the next best area and population proposals as measured by each proposed station's

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

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

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

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

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

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

predicted 60 dBu signal strength contour.<sup>26</sup> If the best technical proposal does not meet the 10 percent threshold, no applicant is awarded points under this criterion. In considering this criterion, we have generally accepted applicants' coverage and population claims. We have rounded any numbers expressed in decimals to the nearest whole numbers.

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

### C. Tie-Breakers.

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

### D. Timely Documentation of Comparative Qualifications.

13. The NCE application, FCC Form 340, is certification-based, but requires applicants to document their claims by submitting supporting information both to the Commission and to a local public file.<sup>30</sup> Applicant point claims must be readily ascertainable from timely-filed application exhibits. Certifications which require the applicant to submit documentation, but which are not supported with any such timely submitted documentation, cannot be credited. For example, the Commission herein rejects claims where the applicant certifies that it qualifies for points for diversity of ownership or as an established local applicant but fails to supply supporting information referred to in the certification. Every applicant claiming points for diversity of ownership must certify that the proposed station's service area would not overlap that of an attributable existing station, that its governing documents require that such diversity be maintained, and "that it has placed documentation of its diversity qualifications in a local public file and has submitted to the Commission copies of that documentation."<sup>31</sup> Similar

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

<sup>27</sup> 47 C.F.R. § 73.7003(c).

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

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

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

<sup>31</sup> See *FCC Form 340*, Instructions, Question IV(2). With respect to documenting current diversity, the preferred information is a map showing no overlap or a statement that the party to the application holds no attributable interest

certifications and documents are required of applicants claiming points as established local applicants.<sup>32</sup> While there is some flexibility in the type of documentation an applicant may provide, an applicant submitting no timely documentation at all cannot have made a valid certification. We have adjusted the points of such applicants downward.

#### IV. POINT SYSTEM DETERMINATIONS

14. This Section contains narrative descriptions of our point system analyses in each mutually exclusive proceeding, organized chronologically by assigned group number. The reserved allotment groups (Groups 1-34) are being considered for the first time. In the NCE MX groups, the Bureau or Commission previously considered the group and named a tentative selectee, followed by filings or events which require additional analysis.<sup>33</sup> Unless otherwise noted, each component of the analysis is based on applicant-provided information.<sup>34</sup> We have provided readers with an Appendix that condenses the group-by-group narratives for the groups that follow into chart form for quick reference. A more detailed guide to the Appendix and its use of abbreviations appears at the beginning of that Section.

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

16. **NCE Reserved Allotment Group 1.** This group is comprised of eight applications proposing service on vacant Channel 261C3 at Anniston, Alabama. The applicants are: Covenant Communications, Inc. ("Covenant"), Equality Broadcasting Network ("EBN"), The Moody Bible Institute of Chicago ("MBIC"), Serendipity Educational Broadcasting, Inc. ("Serendipity"), Anniston Seventh-Day Adventist Church ("ASDA"), Board of Trustees of Jacksonville State University ("JSU Trustees"), Old Time Gospel Ministries ("OTGM"), and Smile FM ("Smile"). The third channel

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in any station. To document future diversity, the applicant would generally submit a copy of the governing documents referenced in the certification.

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

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

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

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

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

reservation standard served as the basis for reservation of the instant allotment. Accordingly, each applicant was required to demonstrate that its proposal would provide a first or second NCE service to at least ten percent of the population within the proposed station's service area and to at least 2,000 people. Each applicant has demonstrated compliance with these criteria.<sup>37</sup> Accordingly, the entire group proceeds to a point hearing.

17. ASDA and JSU Trustees each claim to be eligible for points as established local applicants; the other six applicants do not. EBN, MBIC, Serendipity, ASDA, and Smile claim two points each for diversity of ownership. Serendipity, however, fails to submit any documentation to support its diversity claim, and, accordingly, will not receive points under this criterion. Covenant, JSU Trustees, and OTGM do not claim diversity points. None of the applicants claim points as a statewide network. With respect to technical parameters, Covenant claims that its proposed 60 dBu contour would encompass 3,903 square kilometers with a population of 174,888; EBN, 4,472 square kilometers and 174,215 people; MBIC, 4,850 square kilometers and 216,965 people; Serendipity, 2,915 square kilometers and 204,733 people; ASDA, 3,944 square kilometers and 199,229 people; JSU Trustees, 4,191 square kilometers and 173,668 people; OTGM, 4,544 square kilometers and 164,548 people; and Smile, 1,222 square kilometers and 74,654 people. No applicant is eligible for points under the best technical proposal criterion because MBIC's proposal to serve the largest area and population does not exceed OTGM's next best area proposal and Serendipity's next best population proposal by at least 10 percent. Accordingly, ASDA is credited with a total of five points; JSU Trustees is awarded three points; EBN, MBIC, and Smile each receives two points; and Covenant, Serendipity, and OTGM are each not credited with any points.<sup>38</sup> ASDA is therefore the tentative selectee in Group 1.

18. **NCE Reserved Allotment Group 2.** This group consists of three applications proposing service on vacant Channel 296A at Pima, Arizona, an allotment reserved by means of the third channel reservation standard. The applicants are: Arizona Board of Regents for the Benefit of the University of Arizona ("UA Regents"), World Radio Network, Inc. ("WRN"), and Cochise Community Radio Corporation ("Cochise"). Each applicant satisfies the third channel reservation criteria,<sup>39</sup> and the entire group proceeds to a point system analysis.

19. UA Regents is the only applicant to certify that it is eligible for points as an established local applicant. WRN is the only applicant to claim two points for diversity of ownership. WRN, however, fails to support its diversity claim, and, accordingly, will not be awarded points under this

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<sup>37</sup> See Covenant, EBN, MBIC, Serendipity, ASDA, JSU Trustees, OTGM, and Smile Applications, Questions III(1), III(2), and associated exhibits. Covenant claims that it would provide aggregated first and second NCE service to 17,726 of the 174,888 people encompassed within its 60 dBu contour; EBN to 17,704 of the 174,215 people; MBIC to 37,028 of the 216,965 people; Serendipity to 141,207 of the 204,733 people; ASDA to 48,196 of the 199,229 people; JSU Trustees to 17,896 of the 173,668 people; OTGM to 26,499 of the 164,548 people; and Smile to 9,744 of the 74,654 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>38</sup> If the Commission had accepted Serendipity's claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, ASDA's credited total of five points would have still exceeded Serendipity's claimed total of two points.

<sup>39</sup> See UA Regents, WRN, and Cochise Applications, Questions III(1), III(2), and associated exhibits. UA Regents claims that it would provide aggregated first and second NCE service to 5,145 of the 25,787 people encompassed within its 60 dBu contour; WRN to all 26,982 of the 26,982 people; and Cochise to all 21,223 of the 21,223 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.



criterion.<sup>40</sup> No applicant claims points as a statewide network. With respect to technical parameters, UA Regents claims that its proposed 60 dBu contour would encompass 898 square kilometers with a population of 25,787; WRN, 902 square kilometers and 26,982 people; and Cochise, 1,079 square kilometers and 21,223 people. No applicant is eligible for points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best applicant. Accordingly, UA Regents is credited with a total of three points; WRN and Cochise are each not credited with any points.<sup>41</sup> UA Regents is therefore the tentative selectee in Group 2.

20. **NCE Reserved Allotment Group 3.** This group consists of nine applications proposing service on vacant Channel 260C3 at Somerton, Arizona, an allotment reserved by means of the third channel reservation standard. The applicants are: Arizona Western College (“AWC”), Grace Public Radio (“GPR”), Relevant Media, Inc. (“RMI”), Centro Cristiano Vida Abundante, Inc. (“CCVA”), Smile FM (“Smile”), Campesinos sin Fronteras (“Campesinos”), Hispanic Family Christian Network, Inc. (“HFCN”), Yuma Fine Arts Association, Inc. (“YFAA”), and Radio Revista Nuevo Amanecer Ministries, Inc. (“RRNAM”). Each applicant satisfies the third channel reservation criteria<sup>42</sup> and proceeds to the point system analysis.

21. AWC, RMI, Campesinos, YFAA, and RRNAM each claim points as established local applicants. GPR, CCVA, Smile, and HFCN do not claim points under this criterion. Each applicant, with the exception of AWC and RMI, claims two points for diversity of ownership. GPR fails to submit documentation to support its diversity claim, and, accordingly, will not receive points under this criterion. None of the applicants claim points as statewide networks. With respect to technical parameters, AWC claims that its proposed 60 dBu contour would encompass 2,420 square kilometers with a population of 156,772; GPR, 2,565 square kilometers and 156,491 people; RMI, 4,665 square kilometers and 156,581 people; CCVA, 2,691 square kilometers and 132,815 people; Smile, 2,377 square kilometers and 140,334 people; Campesinos, 3,917 square kilometers and 160,325 people; HFCN, 2,685 square kilometers and 155,444 people; YFAA, 646 square kilometers and 156,777 people; and RRNAM, 3,909 square kilometers and 157,324 people. No applicant is eligible for any points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best proposal. Accordingly, Campesinos, YFAA, and RRNAM are credited with a total of five points each; AWC and RMI each receives three points; CCVA, Smile, and HFCN are

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<sup>40</sup> WRN states that it is the licensee of, *inter alia*, three FM translator stations in Arizona. It does not pledge to divest the FM translators, if necessary, and it provides no information from which the Commission or other parties could verify that it timely modified its governing documents to maintain diversity in the future.

<sup>41</sup> If the Commission had accepted WRN’s claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, UA Regents’ credited total of three points would still have exceeded WRN’s claimed total of two points.

<sup>42</sup> See AWC, GPR, RMI, CCVA, Smile, Campesinos, HFCN, YFAA, and RRNAM Applications, Questions III(1), III(2), and associated exhibits. AWC claims that it would provide aggregated first and second NCE service to 19,430 of the 156,772 people encompassed within its proposed 60 dBu contour; GPR to 64,143 of the 156,491 people; RMI to 19,239 of the 156,581 people; CCVA to 18,883 of the 132,815 people; Smile to 18,392 of the 140,334 people; Campesinos to 23,480 of the 160,325 people; HFCN to all 155,444 of the 155,444 people; YFAA to 19,482 of the 156,777 people; and RRNAM to 20,072 of the 157,324 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

awarded two points each; and GPR is not credited with any points.<sup>43</sup> AWC, RMI, CCVA, Smile, HFCN, and GPR are therefore each eliminated, and Campesinos, YFAA, and RRNAM proceed to a tie-breaker.

22. 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. Campesinos, YFAA, and RRNAM certify that they each have no attributable interests in any radio authorizations. Accordingly, each applicant proceeds to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. Campesinos, YFAA, and RRNAM certify that they each have an attributable interest in one radio application. Accordingly, we proceed to the tiebreaker of last resort - mandatory timesharing. Campesinos, YFAA, and RRNAM are thus each tentative selectees in Group 3 on a time-sharing basis.

23. **NCE Reserved Allotment Group 4.** This group is comprised of five applications proposing service on vacant Channel 223C3 at Willcox, Arizona, an allotment reserved by means of the third channel reservation standard. The applicants are: Grace Public Radio (“GPR”), Arizona Board of Regents for the Benefit of the University of Arizona (“UA Regents”), Versailles Community Broadcasting, Inc. (“Versailles”), World Radio Network, Inc. (“WRN”), and Cochise Community Radio Corporation (“Cochise”). Each applicant satisfies the third channel reservation criteria,<sup>44</sup> and the entire group, therefore, proceeds to the point hearing.

24. UA Regents and Versailles each claim three points as established local applicants; GPR, WRN, and Cochise do not. GPR, Versailles, and WRN claim two points each for diversity of ownership. GPR and WRN, however, fail to adequately support their respective diversity claims and, therefore, will not receive points under this criterion.<sup>45</sup> UA Regents and Cochise do not claim points for diversity of ownership. None of the applicants claim points as statewide networks. With respect to technical parameters, GPR claims that its proposed 60 dBu contour would encompass 4,695 square kilometers with a population of 11,187; UA Regents, 1,924 square kilometers and 8,009 people; Versailles, 4,991 square kilometers and 11,254 people; WRN, 4,887 square kilometers and 11,232 people; and Cochise, 1,925 square kilometers and 7,853 people. No applicant is eligible for points under the best technical proposal criterion because Versailles’ proposal to serve the largest area and population does not exceed WRN’s next best proposal by at least 10 percent. Accordingly, Versailles is credited with a total of five points; UA Regents receives three points; and GPR, WRN, and Cochise are each not credited with any points.<sup>46</sup> Versailles is therefore the tentative selectee in Group 4.

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<sup>43</sup> If the Commission had accepted GPR’s claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, the credited total for Campesinos, YFAA, and RRNAM of five points each would still have exceeded GPR’s claimed total of two points.

<sup>44</sup> See GPR, UA Regents, Versailles, WRN, and Cochise Applications, Questions III(1), III(2), and associated exhibits. GPR claims that it would provide aggregated first and second NCE service to 11,149 of the 11,187 people encompassed within its 60 dBu contour; UA Regents to all 8,009 of the 8,009 people; Versailles to 11,192 of the 11,254 people; WRN to 11,190 of the 11,232 people; and Cochise to 7,837 of the 7,853 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>45</sup> Although WRN pledges to divest its four pending applications for FM translator stations in Willcox, Arizona, it provides no information from which the Commission or other parties could verify that it timely modified its governing documents to maintain diversity in the future. GPR provides no support for its diversity claim.

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

25. **NCE Reserved Allotment Group 6.** This group consists of two applications proposing service on vacant Channel 277C3 at McKinleyville, California. The two applicants are Humboldt State University Advancement Foundation (“HSUAF”) and Grace Public Radio (“GPR”).<sup>47</sup> HSUAF certifies that it is entitled to three points as an established local applicant; GPR does not. Each applicant claims two points for diversity of ownership. GPR, however, fails to support its diversity claim and, therefore, will not be awarded points under this criterion. Neither applicant claims points as a statewide network. With respect to technical parameters, HSUAF’s proposed 60 dBu contour would encompass 1,485 square kilometers with a population of 88,340. GPR’s proposed 60 dBu contour would encompass 4,593 square kilometers with a population of 88,626. Neither applicant qualifies for points under the best technical proposal criterion because GPR’s proposal to reach the largest area and population does not exceed both HSUAF’s proposed area and population by at least ten percent. Accordingly, HSUAF is credited with a total of five points, and GPR is not credited with any points.<sup>48</sup> HSUAF is therefore the tentative selectee in Group 6.

26. **NCE Reserved Allotment Group 7.** This group consists of nine applications proposing service on vacant Channel 298A at Sutter Creek, California, an allotment reserved by means of the third channel reservation standard. The applicants are: Mother Lode Public Radio (“MLPR”), Grace Public Radio (“GPR”), Farms of Amador (“Farms”), Calvary Chapel of Amador County, Inc. (“CCAC”), Educational Media Foundation (“EMF”), Sutter Hill Seventh-Day Adventist Church (“SHSDA”), Indiana Educational Broadcast Corp. (“IEBC”), Hispanic Family Christian Network, Inc. (“HFCN”), and Sonora Sierra Heritage Foundation (“SSHF”). MLPR fails to satisfy the third channel reservation criteria, and, accordingly, is eliminated.<sup>49</sup> The remaining eight applicants demonstrate compliance<sup>50</sup> and proceed to the point system analysis.

27. Farms, CCAC, SHSDA, IEBC, and SSHF each claim points as established local applicants. IEBC, however, fails to sufficiently justify its localism claim, and, accordingly, will not receive points under this criterion.<sup>51</sup> GPR, EMF, and HFCN do not claim localism points. Each

<sup>47</sup> In the *Reserved Allotment Notice*, the Bureau mistakenly listed vacant Channel 277C3 at McKinleyville, California, as an allotment that had been reserved by means of the third channel reservation standard. The allotment, however, was not reserved by means of this standard. See *Amendment of Section 73.202(b), FM Table of Allotments (McKinleyville, California)*, Report and Order, 16 FCC Rcd 8955 (2001). Accordingly, the applicants are not required to demonstrate compliance with the third channel reservation criteria.

<sup>48</sup> If the Commission had accepted GPR’s claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, HSUAF’s credited total of five points would still have exceeded GPR’s claimed total of two points.

<sup>49</sup> MLPR certifies that its proposed station would provide first NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people. It neglects, however, to submit any numbers to support its claim.

<sup>50</sup> See GPR, Farms, CCAC, EMF, SHSDA, IEBC, HFCN, and SSHF Applications, Questions III(1), III(2), and associated exhibits. GPR claims that it would provide aggregated first and second NCE service to all 60,794 of the 60,794 people encompassed within its proposed 60 dBu contour; Farms to 52,589 of the 68,390 people; CCAC to 59,692 of the 82,125 people; EMF to all 10,496 of the 10,496 people; SHSDA to 57,326 of the 68,997 people; IEBC to 21,087 of the 23,066 people; HFCN to 62,126 of the 67,838 people; and SSHF to 51,989 of the 68,741 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>51</sup> To support its localism claim, IEBC explains that it was established in 1990 to deliver programming to schools in central Indiana and in the process of expanding into California, it established an office in El Dorado Hills. The Commission has stated that to qualify for localism points, the headquarters or residences specified must be “a *primary* place of business or *primary* residence and not, for example, a post office box, lawyer’s office, branch

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applicant, with the exception of EMF, claims two points for diversity of ownership. GPR and IEBC fail to submit documentation to support their respective diversity claims, and, accordingly, neither will receive points under this criterion. None of the applicants claim points as statewide networks. With respect to technical parameters, GPR claims that its proposed 60 dBu contour would encompass 2,861 square kilometers with a population of 60,794; Farms, 2,874 square kilometers and 68,390 people; CCAC, 3,379 square kilometers and 82,125 people; EMF, 294 square kilometers and 10,496 people; SHSDA, 2,904 square kilometers and 68,997 people; IEBC, 1,053 square kilometers and 23,066 people; HFCN, 3,372 square kilometers and 67,838 people; and SSHF, 2,863 square kilometers and 68,741 people. No applicant is eligible for points under the best technical proposal criterion because CCAC's proposal to serve the largest area and population does not exceed both HFCN's next best area proposal and SHSDA's next best population proposal by at least 10 percent. Accordingly, Farms, CCAC, SHSDA, and SSHF are credited with a total of five points each; HFCN is awarded two points; and GPR, EMF, and IEBC are not credited with any points.<sup>52</sup> IEBC, HFCN, GPR, and EMF are therefore each eliminated, and Farms, CCAC, SHSDA, and SSHF proceed to a tie-breaker.

28. 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. Farms, CCAC, SHSDA, and SSHF certify that they each have no attributable interests in any radio authorizations. Accordingly, each applicant proceeds to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. Farms, SHSDA, and SSHF certify that they each have an attributable interest in one radio application. CCAC certifies that it has no attributable interest in any radio application. CCAC's certification, however, is incorrect. CCAC should have listed the instant application filed during the window.<sup>53</sup> Accordingly, we proceed to the tie-breaker of last resort - mandatory timesharing. Farms, CCAC, SHSDA, and SSHF are thus each tentative selectees in Group 7 on a time-sharing basis.

29. **NCE Reserved Allotment Group 8.** This group consists of eight applications proposing service on vacant Channel 238A at Westley, California, an allotment reserved by means of the third channel reservation standard. The applicants are: Modesto Peace/Life Center ("MPLC"), Radio Bilingue, Inc. ("RBI"), Ondas de Vida Network, Inc. ("OVN"), Crossroads Church, an Evangelical Free

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office, or vacation home, which would not provide sufficient contact between the station's decision and policy makers and the area to be served." See *NCE Order*, 15 FCC Rcd at 7410 (emphasis added); see also FCC Form 340, Instructions to Section IV, Question 1 ("a nongovernmental applicant is local if, within 25 miles of the reference coordinates for the proposed community of license, applicant has a school campus, its *primary* physical headquarters, or the *primary* residences of 75% of its governing board members."). IEBC fails to establish that its El Dorado Hills office is its primary headquarters. Moreover, we note that IEBC has specified a different "local" address in each of its applications. See, e.g., FCC File Nos. BNPED-20100226AAX and 20071019AUG.

<sup>52</sup> If the Commission had accepted IEBC's claim of three points for localism, and/or GPR's and IEBC's claims of two points each for diversity of ownership, it would not have changed the outcome of this group. Specifically, the credited total for Farms, CCAC, SHSDA, and SSHF of five points each would still have exceeded GPR's claimed total of two points. Further, Farms, CCAC, SHSDA, and SSHF would have prevailed over IEBC under the tie-breaker criterion.

<sup>53</sup> Although it is essential that applicants make full and clear disclosure of all material facts in every application and filing with the Commission, the false statement here does not appear to have been made with the intention of deceiving the Commission. There is no evidence that CCAC knowingly misstated its number of pending applications. Moreover, we note that in response to Section V(2) of FCC Form 340 ("pending applications"), other applicants neglected to list applications filed during the February 2010, filing window, as directed. We, however, caution CCAC to be attentive to its application certifications in the future because a false statement, even absent an intent to deceive, may constitute an actionable violation of Section 1.17 of the Rules. 47 C.F.R. § 1.17.

Church (“Crossroads”), Centro Cristiano Vida Abundante, Inc. (“CCVA”), Calvary Chapel of Turlock, Inc. (“CCT”), Hispanic Family Christian Network, Inc. (“HFCN”), and Sacred Heart Roman Catholic Parish (“SHRCP”). Each applicant satisfies the third channel reservation criteria<sup>54</sup> and proceeds to the point system analysis.

30. MPLC, Crossroads, CCT, and SHRCP each claim points as established local applicants. RBI, OVN, CCVA, and HFCN do not claim points under this criterion. Each applicant claims two points for diversity of ownership with Crossroad’s claim based on a pledge to divest LPFM station KEFC-LP, Turlock, California. OVN is the only applicant to claim points as a statewide network. Such points, however, are only available to applicants that have not received two points for diversity of ownership.<sup>55</sup> OVN cannot receive points under both criteria. With respect to technical parameters, MPLC claims that its proposed 60 dBu contour would encompass 2,019 square kilometers with a population of 253,969; RBI, 2,492 square kilometers and 267,036 people; OVN, 1,259 square kilometers and 159,435 people; Crossroads, 1,497 square kilometers and 147,373 people; CCVA, 1,814 square kilometers and 240,860 people; CCT, 2,299 square kilometers and 269,972 people; HFCN, 1,901 square kilometers and 370,560 people; and SHRCP, 3,376 square kilometers and 587,663 people. SHRCP qualifies for two points under the best technical proposal criterion because its proposal will serve at least 25 percent more area and population than RBI’s next best area proposal and HFCN’s next best population proposal. Accordingly, SHRCP is credited with a total of seven points; MPLC, Crossroads, and CCT are credited with a total of five points each; and RBI, OVN, CCVA, and HFCN each receives two points. SHRCP is therefore the tentative selectee in Group 8.

31. **NCE Reserved Allotment Group 9.** This group is comprised of five applications proposing service on vacant Channel 270C2 at Olathe, Colorado, an allotment reserved by means of the third channel reservation standard. The applicants are: JKJ Educational Foundation (“JKJ”), Calvary Chapel of Montrose (“CCM”), Montrose Christian Broadcasting Corporation (“MCB”), Hispanic Family Christian Network, Inc. (“HFCN”), and Grand Valley Public Radio, Inc. (“GVPR”). Each applicant satisfies the third channel reservation criteria.<sup>56</sup> Accordingly, the entire group proceeds to the point hearing.

32. CCM and MCB each claim three points as established local applicants; the other three applicants do not. Each applicant claims two points for diversity of ownership. CCM’s claim is based on a pledge to divest LPFM station KD VW-LP, Montrose, Colorado. None of the applicants claim points as statewide networks. With respect to technical parameters, JKJ claims that its proposed 60 dBu contour

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<sup>54</sup> See MPLC, RBI, OVN, Crossroads, CCVA, CCT, HFCN, and SHRCP Applications, Questions III(1), III(2), and associated exhibits. MPLC claims that it would provide aggregated first and second NCE service to 26,531 of the 253,969 people encompassed within its proposed 60 dBu contour; RBI to 26,914 of the 267,036 people; OVN to 16,136 of the 159,435 people; Crossroads to 21,420 of the 147,373 people; CCVA to 30,723 of the 240,860 people; CCT to 27,433 of the 269,972 people; HFCN to 61,295 of the 370,560 people; and SHRCP to 154,981 of the 587,663 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>55</sup> See 47 C.F.R. § 73.7003(b)(3). Moreover, OVN does not submit any information to support its claim that it qualifies as a statewide network.

<sup>56</sup> See JKJ, CCM, MCB, HFCN, and GVPR Applications, Questions III(1), III(2), and associated exhibits. JKJ claims that it would provide aggregated first and second NCE service to 4,890 of the 48,835 people encompassed within its 60 dBu contour; CCM to 4,596 of the 33,089 people; MCB to 8,383 of the 74,951 people; HFCN to 45,523 of the 47,244 people; and GVPR to 2,870 of the 14,869 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

would encompass 6,326 square kilometers and 48,835 people; CCM, 3,432 square kilometers and 33,089 people; MCB, 8,132 square kilometers and 74,951 people; HFCN, 2,770 square kilometers and 47,244 people; and GVPR, 588 square kilometers and 14,869 people. MCB qualifies for two points under the best technical proposal criterion because its proposal will serve at least 25 percent more area and population than JKJ's next best proposal. Accordingly, MCB is credited with a total of seven points; CCM receives five points; and JKJ, HFC, and GVPR are credited with two points each. MCB is therefore the tentative selectee in Group 9.

33. **NCE Reserved Allotment Group 10.** This group consists of two applications proposing service on vacant Channel 293C at Olathe, Colorado, an allotment reserved by means of the third channel reservation standard. The two applicants, NC Friends Broadcasting, Inc. ("NC Friends") and Hispanic Family Christian Network, Inc. ("HFCN"), demonstrate compliance with the third channel reservation criteria<sup>57</sup> and proceed to the point system analysis. Neither applicant claims points as an established local applicant or as a statewide network. Each applicant certifies that it is entitled to two points for diversity of ownership. With respect to technical parameters, NC Friends' proposed 60 dBu contour would encompass 23,338 square kilometers with a population of 89,628. HFCN's proposed 60 dBu contour would encompass 4,132 square kilometers with a population of 51,796. NC Friends qualifies for two points under the best technical proposal criterion because its proposal will serve at least 25 percent more area and population than HFCN's proposal. Accordingly, NC Friends is credited with a total of four points, and HFCN receives two points. NC Friends is the tentative selectee in Group 10.

34. **NCE Reserved Allotment Group 11.** This group consists of three applications proposing service on vacant Channel 239A at Big Pine Key, Florida, an allotment reserved by means of the third channel reservation standard. The applicants are: Multicare Foundation, Inc. ("Multicare"), Classical South Florida, Inc. ("CSF"), and Serendipity Educational Broadcasting, Inc. ("Serendipity"). Multicare and CSF satisfy the third channel reservation criteria<sup>58</sup> and proceed to the point system analysis. Serendipity does not, and, accordingly, is eliminated.<sup>59</sup>

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<sup>57</sup> See NC Friends and HFCN Applications, Questions III(1), III(2), and associated exhibits. NC Friends' 60 dBu contour encompasses 89,628 people, and its claimed aggregated first and second service is 22,716 people. HFCN's 60 dBu contour encompasses 51,796 people, and its claimed aggregated first and second service is 41,510 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>58</sup> See Multicare and CSF Applications, Questions III(1), III(2), and associated exhibits. Multicare's 60 dBu contour encompasses 15,610 people, and its claimed aggregated first and second NCE service is 11,874 people. CSF's 60 dBu contour encompasses 14,557 people, and its claimed aggregated first and second NCE service is 11,874 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>59</sup> Serendipity initially certified that its proposal would not provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people. On November 30, 2010, over nine months after the close of the reserved allotment filing window, it amended its application to, *inter alia*, claim that its proposal would provide a second NCE service to at least ten percent of the population within its 60 dBu contour. Serendipity's post-filing window amendment is a prohibited attempt to enhance its comparative position and will not be considered. The Commission has repeatedly disallowed the late submission of requested information in comparative cases, finding that such an allowance would "inevitably lead to abuse of the Commission's processes, applicant gamesmanship, and unfair advantage." *Silver Springs Communications*, Memorandum Opinion and Order, 3 FCC Rcd 5049, 5050 (1988), *rev. denied*, 4 FCC Rcd 4917 (1989) (concluding that the rejection of an untimely filed notice of appearance in a comparative case is necessary in order to maintain the integrity of the Commission's processes and to insure that an applicant's gamesmanship does not result in an unfair advantage). See also *LRB Broadcasting*, Memorandum Opinion and Order, 8 FCC Rcd 3076 (1993). Moreover, we note that even if we were to accept Serendipity's amendment, it would not change the outcome of this group. Multicare would still prevail as the tentative selectee.

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35. Multicare certifies that it is entitled to three points as an established local applicant and two points for diversity of ownership. CSF does not claim points under either criterion. Neither applicant claims points as a statewide network. With respect to technical parameters, Multicare's proposed 60 dBu contour would encompass 151 square kilometers with a population of 15,610. CSF's proposed 60 dBu contour would encompass 299 square kilometers with a population of 14,557. Neither applicant is eligible for points under the best technical proposal criterion because neither applicant proposes to serve both the most area and population, at least 10 percent greater than the other. Accordingly, Multicare is credited with a total of five points, and CSF is not credited with any points. Multicare is the tentative selectee in Group 11.

36. **NCE Reserved Allotment Group 12.** This group consists of seven applications proposing service on vacant Channel 234C3 at Horseshoe Beach, Florida, an allotment reserved by means of the third channel reservation standard. The applicants are: Better Public Broadcasting Association ("BPBA"), Serendipity Educational Broadcasting, Inc. ("Serendipity"), Southern Cultural Foundation ("SCF"), Help Save the Apalachicola River Group, Inc. ("HSARG"), Hispanic Family Christian Network, Inc. ("HFCN"), Smile FM ("Smile"), and Florida Community Radio, Inc. ("FCR"). Each applicant satisfies the third channel reservation criteria,<sup>60</sup> and the entire group proceeds to a point hearing.

37. None of the applicants claim points as an established local applicant. Each applicant claims two points for diversity of ownership with FCR's claim based on a pledge to divest LPFM station WMJB-LP, Lake City, Florida. BPBA and Serendipity fail to submit documentation to support their respective diversity claims, and, accordingly, neither will receive points under this criterion. None of the applicants claim points as statewide networks. With respect to technical parameters, BPBA claims that its proposed 60 dBu contour would encompass 1,506 square kilometers with a population of 15,542; Serendipity, 4,730 square kilometers and 26,580 people; SCF, 2,659 square kilometers and 26,740 people; HSARG, 4,797 square kilometers and 26,832 people; HFCN, 4,594 square kilometers and 32,187 people; Smile, 4,619 square kilometers and 26,566 people; and FCR, 1,454 square kilometers and 26,224 people. No applicant is eligible for any points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best proposal. Accordingly, SCF, HSARG, HFCN, Smile, and FCR are credited with a total of two points each; BPBA and Serendipity are not credited with any points.<sup>61</sup> BPBA and Serendipity are therefore each eliminated, and SCF, HSARG, HFCN, Smile and FCR proceed to a tie-breaker.

38. 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. Smile, SCF, and HFCN certify that they have attributable interests in 22 radio authorizations, four radio authorizations, and one radio authorization, respectively. HSARG and FCR certify that they each have no attributable interests in any radio authorizations. Accordingly, Smile, SCF, and HFCN are eliminated, and HSARG and FCR proceed to the second issue considered in a tie-breaker – the number of

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<sup>60</sup> See BPBA, Serendipity, SCF, HSARG, HFCN, Smile, and FCR Applications, Questions III(1), III(2), and associated exhibits. BPBA claims that it would provide aggregated first and second NCE service to 5,394 of the 15,542 people encompassed within its 60 dBu contour; Serendipity to 19,781 of the 26,580 people; SCF to 12,397 of the 26,740 people; HSARG to 7,972 of the 26,832 people; HFCN to all 32,187 of the 32,187 people; Smile to 5,986 of the 26,566 people; and FCR to 7,600 of the 26,224 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>61</sup> If the Commission had accepted BPBA's or Serendipity's claims of two points each for diversity of ownership, it would not have changed the outcome of this group. Specifically, HSARG and FCR would still have prevailed as the tentative selectees under the tiebreaker criterion.

pending radio applications attributable to each applicant. HSARG and FCR certify that they each have attributable interests in three radio applications. Accordingly, we proceed to the tie-breaker of last resort - mandatory timesharing. HSARG and FCR are thus each tentative selectees in Group 12 on a time-sharing basis.

39. **NCE Reserved Allotment Group 13.** This group consists of six applications proposing service on vacant Channel 261A at Live Oak, Florida, an allotment reserved by means of the third channel reservation standard. The applicants are: Grace Public Radio (“GPR”), Southern Cultural Foundation (“SCF”), Florida Community Radio, Inc. (“FCR”), Help Save the Apalachicola River Group, Inc. (“HSARG”), Learning Avenue, Inc. (“LAI”), and Call Communications Group, Inc. (“Call”). Each demonstrates compliance with the third channel reservation criteria,<sup>62</sup> and the entire group proceeds to a point hearing.

40. FCR and LAI certify that they are each entitled to points as established local applicants; the other four applicants do not claim points under this criterion. Each applicant claims two points for diversity of ownership with FCR’s claim based on a pledge to divest LPFM station WMJB-LP, Lake City, Florida. GPR fails to submit documentation to support its diversity claim, and, accordingly, will not receive points under this criterion. None of the applicants claim points as statewide networks. With respect to technical parameters, GPR claims that its proposed 60 dBu contour would encompass 2,531 square kilometers with a population of 37,612; SCF, 2,356 square kilometers and 44,143 people; FCR, 326 square kilometers and 26,860 people; HSARG, 2,512 square kilometers and 44,182 people; LAI, 2,479 square kilometers and 47,266 people; and Call, 2,457 square kilometers and 58,506 people. No applicant is eligible for any points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best proposal. Accordingly, FCR and LAI are credited with a total of five points each; SCF, HSARG, and Call receive two points each; and GPR is not credited with any points.<sup>63</sup> SCF, HSARG, Call, and GPR are therefore each eliminated, and FCR and LAI proceed to a tie-breaker.

41. 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. FCR and LAI certify that they each have no attributable interests in any radio authorizations. Accordingly, we proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. FCR and LAI certify that they each have an attributable interest in one radio application. FCR’s certification, however, is incorrect. FCR should have listed the instant application and its two other applications filed during the February 2010, window.<sup>64</sup> Accounting

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<sup>62</sup> See GPR, SCF, FCR, HSARG, LAI, and Call Applications, Questions III(1), III(2), and associated exhibits. GPR claims that it would provide aggregated first and second NCE service to 18,449 of the 37,612 people encompassed within its 60 dBu contour; SCF to 27,175 of the 44,143 people; FCR to at least 2,686 of the 26,860 people; HSARG to 8,797 of the 44,182 people; LAI to 8,904 of the 47,266 people; and Call to 9,941 of the 58,506 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>63</sup> If the Commission had accepted GPR’s claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, the credited totals of FCR and LAI of five points each would still have exceeded GPR’s claimed total of two points.

<sup>64</sup> See FCC File Nos. BNPED-20100226AGX and 20100226AIK. Although it is essential that applicants make full and clear disclosure of all material facts in every application and filing with the Commission, there is no evidence that FCR knowingly misstated the number of pending applications. We, however, caution FCR to be attentive to application certifications in the future, because a false statement, even absent an intent to deceive, may constitute an actionable violation of Section 1.17 of the Rules. See also *supra* note 53.



for this error, LAI therefore prevails based on this second tie-breaker and is the tentative selectee in Group 13.

42. **NCE Reserved Allotment Group 14.** This group consists of three applications proposing service on vacant Channel 240A at Otter Creek, Florida, an allotment reserved by means of the third channel reservation standard. The applicants are: Better Public Broadcasting Association (“BPBA”), Citrus County Association for Retarded Citizens, Inc. (“CCARC”), and Florida Community Radio, Inc. (“FCR”). Each applicant satisfies the third channel reservation criteria,<sup>65</sup> and the group proceeds to a point system analysis.

43. FCR certifies that it is eligible for points as an established local applicant; BPBA and CCARC do not. BPBA and FCR claim two points each for diversity of ownership with FCR’s claim based on a pledge to divest LPFM station WMJB-LP, Lake City, Florida. BPBA fails to submit any documentation to support its diversity claim, and, accordingly, will not receive points under this criterion. CCARC does not claim diversity points. None of the applicants claim points as a statewide network. With respect to technical parameters, BPBA claims that its proposed 60 dBu contour would encompass 1,044 square kilometers with a population of 3,566; CCARC, 2,216 square kilometers and 14,638 people; and FCR, 382 square kilometers and 11,653 people. CCARC qualifies for two points under the best technical proposal criterion because its proposal will serve at least 25 percent more area and population than BPBA’s next best area proposal and FCR’s next best population proposal. Accordingly, FCR is credited with a total of five points; CCARC is awarded two points; and BPBA is not credited with any points.<sup>66</sup> FCR is therefore the tentative selectee in Group 14.

44. **NCE Reserved Allotment Group 15.** This group consists of three applications proposing service on vacant Channel 245A at Reynolds, Georgia, an allotment reserved by means of the third channel reservation standard. The applicants are: Calvary Chapel Heartland, Inc. (“CCH”), Serendipity Educational Broadcasting, Inc. (“Serendipity”), and Fort Valley State University (“FVSU”). Each satisfies the third channel reservation criteria,<sup>67</sup> and the group proceeds to a point hearing.

45. CCH and FVSU each claim to be eligible for points as established local applicants; Serendipity does not. Each applicant claims two points for diversity of ownership with the claims of CCH and FVSU based on pledges to divest LPFM stations WLVN-LP and WFVS-LP, respectively. Serendipity fails to submit documentation to support its diversity claim, and, accordingly, will not receive points under this criterion. None of the applicants claim points as statewide networks. With respect to technical parameters, CCH claims that its proposed 60 dBu contour would encompass 2,514 square kilometers with a population of 41,598; Serendipity, 2,095 square kilometers and 29,636 people; and FVSU, 2,531 square kilometers and 42,157 people. No applicant is eligible for points under the best

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<sup>65</sup> See BPBA, CCARC, and FCR Applications, Questions III(1), III(2), and associated exhibits. BPBA claims that it would provide aggregated first and second NCE service to 3,439 of the 3,566 people encompassed within its 60 dBu contour; CCARC to 4,648 of the 14,638 people; and FCR to 3,896 of the 11,653 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>66</sup> If the Commission had accepted BPBA’s claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, FCR’s credited total of five points would still have exceeded BPBA’s claimed total of two points.

<sup>67</sup> See CCH, Serendipity, and FVSU Applications, Questions III(1), III(2), and associated exhibits. CCH claims that it would provide aggregated first and second NCE service to 5,043 of the 41,598 people encompassed within its 60 dBu contour; Serendipity to 17,111 of the 29,636 people; and FVSU to 5,358 of the 42,157 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

technical proposal criterion because FVSU's proposal to serve the largest area and population does not exceed CCH's next best proposal by at least 10 percent. Accordingly, CCH and FVSU are each credited with a total of five points; Serendipity is not credited with any points.<sup>68</sup> Serendipity is therefore eliminated, and CCH and FVSU proceed to a tie-breaker.

46. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. FVSU certifies that it has 10 attributable interests; CCH certifies that it has no attributable interest in any radio authorization. CCH therefore prevails based on this first tie-breaker and is the tentative selectee in Group 15.

47. **NCE Reserved Allotment Group 16.** This group consists of four applications proposing service on vacant Channel 271C3 at Keosauqua, Iowa, an allotment reserved by means of the third channel reservation standard. The applicants are: Serendipity Educational Broadcasting, Inc. ("Serendipity"), Extreme Grace Media, Inc. ("EGM"), St. Mary Radio d/b/a Radio Apostolate for the Heartland ("SMR"), and Fairfield Youth Advocacy, Inc. ("FYA"). Each applicant demonstrates compliance with the third channel reservation criteria.<sup>69</sup> The entire group, therefore, proceeds to a point hearing.

48. SMR and FYA certify that they are each entitled to points as established local applicants; the other two applicants do not claim points under this criterion. Each applicant claims two points for diversity of ownership with FYA's claim based on a pledge to divest LPFM station KRUU-LP, Fairfield, Iowa. Serendipity fails to submit documentation to support its diversity claim, and, accordingly, will not receive points under this criterion. None of the applicants claim points as statewide networks. With respect to technical parameters, Serendipity claims that its proposed 60 dBu contour would encompass 4,855 square kilometers with a population of 41,780; EGM, 4,782 square kilometers and 39,914 people; SMR, 4,830 square kilometers and 65,939 people; and FYA, 4,674 square kilometers and 45,410 people. No applicant is eligible for any points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best proposal. Accordingly, SMR and FYA are credited with a total of five points each; EGM receives two points; and Serendipity is not credited with any points.<sup>70</sup> EGM and Serendipity are therefore each eliminated, and SMR and FYA proceed to a tie-breaker.

49. 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. SMR and FYA certify that they each have no attributable interests in any radio authorizations.<sup>71</sup>

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<sup>68</sup> If the Commission had accepted Serendipity's claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, the credited totals of CCH and FVSU for five points each would still have exceeded Serendipity's claimed total of two points.

<sup>69</sup> See Serendipity, EGM, SMR, and FYA Applications, Questions III(1), III(2), and associated exhibits. Serendipity claims that it would provide aggregated first and second NCE service to all 41,780 of the 41,780 people encompassed within its 60 dBu contour; EGM to 19,402 of the 39,914 people; SMR to 17,771 of the 65,939 people; and FYA to 17,127 of the 45,410 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>70</sup> If the Commission had accepted Serendipity's claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, the credited totals of SMR and FYA of five points each would still have exceeded Serendipity's claimed total of two points.

<sup>71</sup> Because FYA has pledged to divest LPFM station KRUU-LP, it may exclude the station from its count of attributable radio authorizations. See *supra* note 28.

Accordingly, we proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. SMR and FYA certify that they each have an attributable interest in one radio application. Accordingly, we proceed to the tie-breaker of last resort - mandatory timesharing. SMR and FYA are thus each tentative selectees in Group 16 on a time-sharing basis.

50. **NCE Reserved Allotment Group 17.** This group is comprised of six applications proposing service on vacant Channel 246A at Merville, Iowa, an allotment reserved by means of the third channel reservation standard. The applicants are: Iowa State University of Science & Technology (“ISUST”), JKJ Educational Foundation (“JKJ”), Public Education Network (“PEN”), Hammock Educational and Environmental Community Services (“Hammock”), Hispanic Family Christian Network, Inc. (“HFCN”), and Alleycat Communications (“Alleycat”). Each applicant satisfies the third channel reservation criteria,<sup>72</sup> and the group proceeds to a point hearing.

51. ISUST is the only applicant to certify that it is entitled to three points as an established local applicant. Each applicant, with the exception of ISUST, claims two points for diversity of ownership. Hammock is the only applicant to claim points as a statewide network. Such points, however, are only available to applicants that have not received two points for diversity of ownership.<sup>73</sup> Hammock cannot receive points under both criteria. With respect to technical parameters, ISUST claims that its proposed 60 dBu contour would encompass 2,541 square kilometers with a population of 45,818; JKJ, 1,985 square kilometers and 54,057 people; PEN, 1,802 square kilometers and 41,581 people; Hammock, 2,359 square kilometers and 26,172 people; HFCN, 3,011 square kilometers and 17,736 people; and Alleycat, 1,658 square kilometers and 13,314 people. No applicant is eligible for points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best proposal. Accordingly, ISUST is credited with a total of three points; JKJ, PEN, Hammock, HFCN, and Alleycat each receive two points. ISUST is the tentative selectee in Group 17.

52. **NCE Reserved Allotment Group 18.** This group consists of three applications proposing service on vacant Channel 268A at Rudd, Iowa, an allotment reserved by means of the third channel reservation standard. The applicants are: Network of Glory, Inc. (“NOG”), Minn-Iowa Christian Broadcasting, Inc. (“MICB”), and Extreme Grace Media, Inc. (“EGM”). Each applicant satisfies the third channel reservation criteria,<sup>74</sup> and the group proceeds to a point hearing.

53. None of the applicants claims points as an established local applicant or as a statewide network. Each applicant claims two points for diversity of ownership. Although NOG certifies that it

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<sup>72</sup> See ISUST, JKJ, PEN, Hammock, HFCN, and Alleycat Applications, Questions III(1), III(2), and associated exhibits. ISUST claims that it would provide aggregated first and second NCE service to 6,398 of the 45,818 people encompassed within its 60 dBu contour; JKJ to 5,425 of the 54,057 people; PEN to 4,347 of the 41,581 people; Hammock to 8,535 of the 26,172 people; HFCN to all 17,736 of the 17,736 people; and Alleycat to 4,527 of the 13,314 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>73</sup> See 47 C.F.R. § 73.7003(b)(3). Moreover, Hammock does not submit any information to support its claim that it qualifies as a statewide network.

<sup>74</sup> See NOG, MICB, and EGM Applications, Questions III(1), III(2), and associated exhibits. NOG claims that it would provide aggregated first and second NCE service to 17,922 of the 58,473 people encompassed within its 60 dBu contour; MICB to 10,322 of the 52,820 people; and EGM to 5,281 of the 45,103 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

currently has no authorizations, NOG provides no indication that it timely adopted governing documents that would require it to maintain diversity in the future. Accordingly, we will not award points to NOG under this criterion. With respect to technical parameters, NOG claims that its proposed 60 dBu contour would encompass 2,502 square kilometers with a population of 58,473; MICB, 2,108 square kilometers and 52,820 people; and EGM, 1,798 square kilometers and 45,103 people. NOG qualifies for one point under the best technical proposal criterion because its proposal will serve at least 10 percent more area and population than MICB's next best proposal. Accordingly, MICB and EGM are each credited with a total of two points, and NOG is credited with one point. NOG is therefore eliminated, and MICB and EGM proceed to a tie-breaker.

54. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. MICB certifies that it has nine attributable interests; EGM certifies that it has seven attributable interests in radio authorizations. EGM therefore prevails based on this first tie-breaker and is the tentative selectee in Group 18.

55. **NCE Reserved Allotment Group 19.** This group is comprised of four applications proposing service on vacant Channel 247C1 at Weiser, Idaho, an allotment reserved by means of the third channel reservation standard. The applicants are: Grace Public Radio ("GPR"), Blessed Sacrament Catholic Church of Ontario, Inc. ("BSCCO"), Hispanic Family Christian Network, Inc. ("HFCN"), and Tool Shed PDX ("Tool"). Each applicant demonstrates compliance with the third channel reservation criteria.<sup>75</sup> The entire group, therefore, proceeds to a point system analysis.

56. BSCCO is the only applicant to certify that it is entitled to three points as an established local applicant. Each applicant claims two points for diversity of ownership. GPR, however, provides no documentation to support its claim, and, accordingly, will not receive points under this criterion. None of the applicants claim points as statewide networks. With respect to technical parameters, GPR claims that its proposed 60 dBu contour would encompass 15,688 square kilometers with a population of 79,072; BSCCO, 17,317 square kilometers and 80,011 people; HFCN, 24,785 square kilometers and 161,446 people; and Tool, 16,162 square kilometers and 80,247 people. HFCN qualifies for two points under the best technical proposal criterion because its proposal will serve at least 25 percent more area and population than BSCCO's next best area proposal and Tool's next best population proposal. Accordingly, BSCCO is credited with a total of five points; HFCN receives four points; Tool is awarded two points; and GPR is not credited with any points.<sup>76</sup> BSCCO is the tentative selectee in Group 19.

57. **NCE Reserved Allotment Group 20.** This group consists of five applications proposing service on vacant Channel 277A at Canton, Illinois, an allotment reserved by means of the third channel reservation standard. The applicants are: Grace Public Radio ("GPR"), Canton Seventh-Day Adventist Church ("CSDA"), Illinois State University ("ISU"), Hispanic Family Christian Network, Inc.

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<sup>75</sup> See GPR, BSCCO, HFCN, and Tool Applications, Questions III(1), III(2), and associated exhibits. GPR claims that it would provide aggregated first and second NCE service to 37,925 of the 79,072 people encompassed within its 60 dBu contour; BSCCO to 14,676 of the 80,011 people; HFCN to all 161,446 of the 161,446 people; and Tool to 32,338 of the 80,247 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>76</sup> If the Commission had accepted GPR's claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, BSCCO's credited total of five points would have still exceeded GPR's claimed total of two points.

("HFCN"), and Indiana Educational Broadcast Corp. ("IEBC"). Each applicant satisfies the third channel reservation criteria,<sup>77</sup> and the group proceeds to a point hearing.

58. CSDA and ISU certify that they are each entitled to three points as established local applicants; the other three applicants do not claim points under this criterion. Each applicant, with the exception of ISU, claims two points for diversity of ownership. GPR and IEBC fail to support their respective diversity claims, and, accordingly, will not receive points under this criterion. None of the applicants claim points as statewide networks. With respect to technical parameters, GPR claims that its proposed 60 dBu contour would encompass 2,456 square kilometers with a population of 44,599; CSDA, 2,290 square kilometers and 72,872 people; ISU, 1,625 square kilometers and 35,707 people; HFCN, 1,905 square kilometers and 38,983 people; and IEBC, 2,273 square kilometers and 71,913 people. No applicant is eligible for any points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best proposal. Accordingly, CSDA is credited with a total of five points; ISU receives three points; HFCN is awarded two points; and GPR and IEBC are not credited with any points.<sup>78</sup> CSDA is therefore the tentative selectee in Group 20.

59. **NCE Reserved Allotment Group 21.** This group consists of four applications proposing service on vacant Channel 258A at Cedarville, Illinois, an allotment reserved by means of the third channel reservation standard. The applicants are: Network of Glory, Inc. ("NOG"), Community Broadcasting, Inc. ("CBI"), Our Catholic Family Radio ("OCFR"), and Shannon Baptist Church ("SBC"). NOG fails to satisfy the third channel reservation criteria, and, accordingly, is eliminated.<sup>79</sup> The remaining three applicants each satisfy the reservation criteria<sup>80</sup> and proceed to a point system analysis.

60. OCFR and SBC claim three points each as established local applicants; CBI does not. SBC fails to provide any documentation to support its localism claim, and, accordingly, will not receive points under this criterion. Each applicant claims two points for diversity of ownership. SBC, however, fails to support its diversity claim and will not receive points under this criterion. None of the applicants claim points as statewide networks. With respect to technical parameters, CBI claims that its proposed 60 dBu contour would encompass 2,390 square kilometers with a population of 59,129; OCFR, 2,546 square kilometers and 62,666 people; and SBC, 2,486 square kilometers and 61,431 people. No applicant is eligible for points under the best technical proposal criterion because OCFR's proposal to serve the

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<sup>77</sup> See GPR, CSDA, ISU, HFCN, and IEBC Applications, Questions III(1), III(2), and associated exhibits. GPR claims that it would provide aggregated first and second NCE service to 16,247 of the 44,599 people encompassed within its 60 dBu contour; CSDA to 19,100 of the 77,872 people; ISU to 12,738 of the 35,707 people; HFCN to all 38,983 of the 38,983 people; and IEBC to 18,948 of the 71,913 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>78</sup> If the Commission had accepted GPR's or IEBC's claims of two points each for diversity of ownership, it would not have changed the outcome of this group. Specifically, CSDA's credited total of five points would have still exceeded GPR's and IEBC's claimed total of two points each.

<sup>79</sup> NOG certifies that its proposed station would not provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>80</sup> See CBI, OCFR, and SBC Applications, Questions III(1), III(2), and associated exhibits. CBI claims that it would provide aggregated first and second NCE service to 53,170 of the 59,129 people encompassed within its 60 dBu contour; OCFR to 53,090 of the 62,666 people; and SBC to 49,903 of the 61,431 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

largest area and population does not exceed SBC's next best proposal by at least 10 percent. Accordingly, OCFR is credited with a total of five points; CBI receives two points; and SBC is not credited with any points.<sup>81</sup> OCFR is therefore the tentative selectee in Group 21.

61. **NCE Reserved Allotment Group 22.** This group consists of two applications proposing service on vacant Channel 297A at Clifton, Illinois, an allotment reserved by means of the third channel reservation standard. The applicants, Serendipity Educational Broadcasting, Inc. ("Serendipity") and Prairie Air, Inc. ("Prairie"), each satisfy the third channel reservation criteria.<sup>82</sup> Neither applicant claims to be eligible for points as an established local applicant. Each applicant claims two points for diversity of ownership. Serendipity, however, does not provide the requisite support for its diversity claim and, accordingly, will not receive points under this criterion.<sup>83</sup> Neither applicant claims points as a statewide network. With respect to technical parameters, Serendipity's proposed 60 dBu contour would encompass 1,455 square kilometers with a population of 16,159. Prairie's proposed 60 dBu contour would encompass 2,367 square kilometers with a population of 34,348. Prairie qualifies for two points under the best technical proposal criterion because its proposal will serve at least 25 percent more area and population than Serendipity's proposal. Accordingly, Prairie is credited with a total of four points; Serendipity is not credited with any points.<sup>84</sup> Prairie is therefore the tentative selectee in Group 22.

62. **NCE Reserved Allotment Group 23.** This group consists of eight applications proposing service on vacant Channel 295A at Freeport, Illinois, an allotment reserved by means of the third channel reservation standard. The applicants are: Grace Public Radio ("GPR"), Northwestern Illinois Radio Fellowship ("NIRF"), Community Broadcasting, Inc. ("CBI"), Aquin Central Catholic High School ("Aquin"), Calvary Radio Network, Inc. ("Calvary"), Christian Radio Network ("CRN"), Rockford Urban Ministries ("RUM"), and Shannon Baptist Church ("SBC"). Each applicant satisfies the third channel reservation criteria,<sup>85</sup> and the entire group proceeds to a point hearing.

63. NIRF, Aquin, and SBC certify that each is entitled to points as an established local applicant. SBC, however, fails to provide any documentation to support its claim, and, accordingly, will not receive points under this criterion. GPR, CBI, Calvary, CRN, and RUM do not claim localism points.

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<sup>81</sup> If the Commission had accepted SBC's claims of three points for localism and two points for diversity of ownership, it would not have changed the outcome of this group. OCFR would still have prevailed as the tentative selectee under the second tie-breaker criterion.

<sup>82</sup> See Serendipity and Prairie Applications, Questions III(1), III(2), and associated exhibits. Serendipity's 60 dBu contour encompasses 16,159 people, and its claimed aggregated first and second NCE service is all 16,159 people. Prairie's 60 dBu contour encompasses 34,348 people, and its claimed aggregated first and second NCE service is 11,114 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>83</sup> Although Serendipity certifies that its proposed station will not overlap the principal community contours of any of its authorized stations, Serendipity provides no indication that it timely adopted governing documents that would require it to maintain diversity in the future.

<sup>84</sup> If the Commission had accepted Serendipity's claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, Prairie's credited total of four points would still have exceeded Serendipity's claimed total of two points.

<sup>85</sup> See GPR, NIRF, CBI, Aquin, Calvary, CRN, RUM, and SBC Applications, Questions III(1), III(2), and associated exhibits. GPR claims that it would provide aggregated first and second NCE service to 26,512 of the 64,660 people encompassed within its 60 dBu contour; NIRF to 46,577 of the 64,632 people; CBI to 52,360 of the 62,147 people; Aquin to 46,666 of the 64,927 people; Calvary to 43,402 of the 70,977 people; CRN to all 64,680 of the 64,680 people; RUM to 46,538 of the 64,552 people; and SBC to 56,000 of the 61,431 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

Each applicant claims two points for diversity of ownership. GPR, Calvary, and SBC fail to submit documentation to support their respective diversity claims, and, accordingly, each will not receive points under this criterion. NIRF is the only applicant to claim points as a statewide network. Such points, however, are only available to applicants that have not received two points for diversity of ownership.<sup>86</sup> NIRF cannot receive points under both criteria. With respect to technical parameters, GPR claims that its proposed 60 dBu contour would encompass 2,577 square kilometers with a population of 64,660; NIRF, 2,566 square kilometers and 64,632 people; CBI, 2,511 square kilometers and 62,147 people; Aquin, 2,662 square kilometers and 64,927 people; Calvary, 2,262 square kilometers and 70,977 people; CRN, 6,141 square kilometers and 64,680 people; RUM, 2,567 square kilometers and 64,552 people; and SBC, 6,200 square kilometers and 61,431 people. No applicant is eligible for any points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best proposal. Accordingly, NIRF and Aquin are credited with a total of five points; CBI, CRN, and RUM are awarded two points each; GPR, Calvary and SBC are not credited with any points.<sup>87</sup> CBI, CRN, RUM, GPR, Calvary, and SBC are therefore each eliminated, and NIRF and Aquin proceed to a tie-breaker.

64. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. Aquin certifies that it has four attributable interests; NIRF certifies that it has no attributable interest in any radio authorization. NIRF therefore prevails based on this first tie-breaker and is the tentative selectee in Group 23.

65. **NCE Reserved Allotment Group 24.** This group consists of two applications proposing service on vacant Channel 282A at Pinckneyville, Illinois, an allotment reserved by means of the third channel reservation standard. The two applicants, Pinckneyville Community Radio (“PCR”) and Heterodyne Broadcasting Company (“HBC”), each demonstrate compliance with the third channel reservation criteria.<sup>88</sup> PCR and HBC each claim three points as established local applicants and two points for diversity of ownership. Neither applicant claims points as a statewide network. With respect to technical parameters, PCR’s proposed 60 dBu contour would encompass 1,578 square kilometers with a population of 27,926. HBC’s proposed 60 dBu contour would encompass 1,612 square kilometers with a population of 27,957. Neither applicant qualifies for points under the best technical proposal criterion because neither proposal will serve at least 10 percent more area and population than the other. Accordingly, PCR and HBC are each credited with a total of five points and proceed to the tie-breaker.

66. 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

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<sup>86</sup> See 47 C.F.R. § 73.7003(b)(3). Moreover, NIRF does not submit any information to support its claim that it qualifies as a statewide network.

<sup>87</sup> If the Commission had accepted SBC’s claim of three points for localism and/or SBC’s, Calvary’s, and GPR’s claims of two points each for diversity of ownership, it would not have changed the outcome of this group. Specifically, NIRF’s credited total of five points would have still exceeded Calvary’s and GPR’s claimed total of two points each. Further, NIRF would have prevailed over SBC as the tentative selectee under the second tiebreaker criterion.

<sup>88</sup> See PCR and HBC Applications, Questions III(1), III(2), and associated exhibits. PCR’s 60 dBu contour encompasses 27,926 people, and its claimed aggregated first and second NCE service is 11,973 people. HBC’s 60 dBu contour encompasses 27,957 people, and its claimed aggregated first and second NCE service is 12,487 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

prevails. PCR certifies that it has no attributable interests; HBC certifies that it has an attributable interest in one radio authorization. PCR therefore prevails based on this first tie-breaker and is the tentative selectee in Group 24.

67. **NCE Reserved Allotment Group 25.** This group consists of seven applications proposing service on vacant Channel 228A at Columbus, Indiana, an allotment reserved by means of the third channel reservation standard. The applicants are: The Moody Bible Institute of Chicago (“MBIC”), Christian Radio Friends, Inc. (“CRF”), Triangle Foundation, Inc. (“Triangle”), Good Shepherd Radio, Inc. (“GSR”), The Trustees of Indiana University (“IU Trustees”), The Gabriel Project, Inc. (“Gabriel”), and Hispanic Family Christian Network, Inc. (“HFCN”). Each applicant satisfies the third channel reservation criteria.<sup>89</sup> The entire group, therefore, proceeds to a point hearing.

68. Triangle, GSR, IU Trustees, and Gabriel certify that they are each entitled to points as established local applicants; MBIC, CRF, and HFCN do not claim points under this criterion. Triangle fails to adequately support its localism claim, and, accordingly, will not receive points under this criterion.<sup>90</sup> Each applicant, with the exception of GSR, claims two points for diversity of ownership. Triangle’s diversity claim is based on a pledge to divest LPFM station WWCC-LP, Lafayette, Indiana. Triangle, however, has not shown that its governing documents limit its ability to acquire other stations in the same area after divesting the LPFM station. Similarly, IU Trustees fails to support its diversity claim. Accordingly, we will not award points to either Triangle or IU Trustees under this criterion. MBIC is the only applicant to claim points as a statewide network. Such points, however, are only available to applicants that have not received two points for diversity of ownership.<sup>91</sup> MBIC cannot receive points under both criteria. With respect to technical parameters, MBIC claims that its proposed 60 dBu contour would encompass 2,288 square kilometers with a population of 119,690; CRF, 1,671 square kilometers and 105,626 people; Triangle, 1,485 square kilometers and 100,245 people; GSR, 2,534 square kilometers and 130,801 people; IU Trustees, 2,506 square kilometers and 131,041 people; Gabriel, 2,584 square kilometers and 120,328 people; and HFCN, 2,268 square kilometers and 120,760 people. No applicant is eligible for any points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least ten percent greater than the next best proposal. Accordingly, Gabriel is credited with a total of five points; GSR and IU Trustees are awarded three points each; MBIC,

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<sup>89</sup> See MBIC, CRF, Triangle, GSR, IU Trustees, Gabriel, and HFCN Applications, Questions III(1), III(2), and associated exhibits. MBIC claims that it would provide aggregated first and second NCE service to 45,523 of the 119,690 people encompassed within its 60 dBu contour; CRF to 24,243 of the 105,626 people; Triangle to 22,370 of the 100,245 people; GSR to 42,786 of the 130,801 people; IU Trustees to 42,018 of the 131,041 people; Gabriel to 34,850 of the 120,328 people; and HFCN to all 120,760 of the 120,760 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>90</sup> To support its localism claim, Triangle explains that it was established in 1994 and that one of its officers has been working on expanding its mission into the Columbus area for several years, and, accordingly, established an office in Columbus. The Commission has stated that to qualify for localism points, the headquarters or residences specified must be “a *primary* place of business or *primary* residence and not, for example, a post office box, lawyer’s office, branch office, or vacation home, which would not provide sufficient contact between the station’s decision and policy makers and the area to be served.” See *NCE Order*, 15 FCC Rcd at 7410 (emphasis added); see also FCC Form 340, Instructions to Section IV, Question 1 (“a nongovernmental applicant is local if, within 25 miles of the reference coordinates for the proposed community of license, applicant has a school campus, its *primary* physical headquarters, or the *primary* residences of 75% of its governing board members.”). Triangle fails to establish that its Columbus office is its primary headquarters. Moreover, we note that Triangle has specified a different “local” address in each of its applications. See, e.g., FCC File No. BNPED-20100226AJS.

<sup>91</sup> See 47 C.F.R. § 73.7003(b)(3). Moreover, MBIC does not submit any information to support its claim that it qualifies as a statewide network.



CRF, and HFCN receive two points each; and Triangle is not credited with any points.<sup>92</sup> Gabriel is therefore the tentative selectee in Group 25.

69. **NCE Reserved Allotment Group 26.** This group consists of four applications proposing service on vacant Channel 242A at Farmersburg, Indiana, an allotment reserved by means of the third channel reservation standard. The applicants are: Hope Broadcasting, Inc. (“Hope”), Community Broadcasting, Inc. (“CBI”), Hispanic Family Christian Network, Inc. (“HFCN”), and Serendipity Educational Broadcasting, Inc. (“Serendipity”). Each applicant satisfies the third channel reservation criteria,<sup>93</sup> and the group proceeds to a point system analysis.

70. None of the applicants claims to be eligible for points as an established local applicant or as a statewide network. Each applicant claims two points for diversity of ownership. Serendipity, however, fails to support its diversity claim and will not receive points under this criterion. With respect to technical parameters, Hope claims that its proposed 60 dBu contour would encompass 2,138 square kilometers with a population of 88,900; CBI, 2,442 square kilometers and 106,699 people; HFCN, 1,764 square kilometers and 62,370 people; and Serendipity, 1,668 square kilometers and 37,804 people. CBI qualifies for one point under the best technical proposal criterion because its proposal will serve at least 10 percent more area and population than Hope’s next best proposal. Accordingly, CBI is credited with a total of three points; Hope and HFCN each receive two points; and Serendipity is not credited with any points.<sup>94</sup> CBI is therefore the tentative selectee in Group 26.

71. **NCE Reserved Allotment Group 27.** This group consists of two applications proposing service on vacant Channel 291A at Fowler, Indiana, an allotment reserved by means of the third channel reservation standard. The two applicants, Harvest Chapel Attica, Inc. (“HCA”) and Educational Broadband Corp. (“EBC”), satisfy the third channel reservation criteria.<sup>95</sup> HCA and EBC each claim three points as established local applicants and two points for diversity of ownership. EBC, however, fails to sufficiently justify its localism and diversity claims, and, accordingly, will not be awarded points under either criterion.<sup>96</sup> Neither applicant claims points as a statewide network. With

<sup>92</sup> If the Commission had accepted Triangle’s claim of three points for localism and/or Triangle’s and IU Trustees’ claims of two points each for diversity of ownership, it would not have changed the outcome of this group. Specifically, Gabriel would still have prevailed as the tentative selectee under the first tie-breaker criterion.

<sup>93</sup> See Hope, CBI, HFCN, and Serendipity Applications, Questions III(1), III(2), and associated exhibits. Hope claims that it would provide aggregated first and second NCE service to 31,077 of the 88,900 people encompassed within its 60 dBu contour; CBI to 29,603 of the 106,699 people; HFCN to all 62,370 of the 62,370 people; and Serendipity to 32,640 of the 37,804 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>94</sup> If the Commission had accepted Serendipity’s claim of two points for diversity of ownership, it would not have changed the outcome of this Group. Specifically, CBI’s credited total of three points would still have exceeded Serendipity’s claimed total of two points.

<sup>95</sup> See HCA and EBC Applications, Questions III(1), III(2), and associated exhibits. HCA’s 60 dBu contour encompasses 24,291 people, and its claimed aggregated first and second NCE service is 14,347 people. EBC’s 60 dBu contour encompasses 22,208 people, and its claimed aggregated first and second NCE service is 21,787 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>96</sup> To support its localism claim, EBC explains that it was established in 1990 to deliver programming to schools in central Indiana, and in the process of expanding into a new area, it established an office in Lafayette. The Commission has stated that to qualify for localism points, the headquarters or residences specified must be “a *primary* place of business or *primary* residence and not, for example, a post office box, lawyer's office, branch office, or vacation home, which would not provide sufficient contact between the station's decision and policy

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respect to technical parameters, HCA's proposed 60 dBu contour would encompass 2,197 square kilometers with a population of 24,291. EBC's proposed 60 dBu contour would encompass 2,497 square kilometers with a population of 22,208. Neither applicant qualifies for points under the best technical proposal criterion because neither proposal will serve at least 10 percent more area and population than the other. Accordingly, HCA is credited with a total of five points, and EBC is not credited with any points.<sup>97</sup> HCA is the tentative selectee in Group 27.

72. **NCE Reserved Allotment Group 28.** This group consists of three applications proposing service on vacant Channel 265A at Madison, Indiana, an allotment reserved by means of the third channel reservation standard. The applicants are: Good Samaritan Educational Radio, Inc. ("GSER"), Cornerstone Community Fellowship ("Cornerstone"), and Triangle Foundation, Inc. ("Triangle"). Each applicant satisfies the third channel reservation criteria,<sup>98</sup> and the group proceeds to a point hearing.

73. Cornerstone and Triangle certify that they are each entitled to points as established local applicants; GSER does not. Triangle, however, fails to adequately support its claim, and, accordingly, will not receive points under this criterion.<sup>99</sup> Cornerstone and Triangle each claim two points for diversity of ownership with Triangle's claim based on a pledge to divest LPFM station WWCC-LP, Lafayette, Indiana. Triangle, however, has not shown that its governing documents limit its ability to acquire other stations in the same area after divesting the LPFM station. Accordingly, we will not award diversity points to Triangle. GSER does not claim points under this criterion. None of the applicants claim points as a statewide network. With respect to technical parameters, GSER claims that

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makers and the area to be served." See *NCE Order*, 15 FCC Rcd at 7410 (emphasis added); see also FCC Form 340, Instructions to Section IV, Question 1 ("a nongovernmental applicant is local if, within 25 miles of the reference coordinates for the proposed community of license, applicant has a school campus, its *primary* physical headquarters, or the *primary* residences of 75% of its governing board members."). EBC fails to establish that its Lafayette office is its primary headquarters. Further, with respect to its diversity claim, although EBC certifies that it currently has no authorizations, it provides no indication that its governing documents limit its ability to acquire other stations in the same area.

<sup>97</sup> If the Commission had accepted EBC's claims of three points for localism and two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, HCA would still have prevailed as the tentative selectee under the second tiebreaker criterion.

<sup>98</sup> See GSER, Cornerstone, and Triangle Applications, Questions III(1), III(2), and associated exhibits. GSER claims that it would provide aggregated first and second NCE service to 25,418 of the 59,250 people encompassed within its 60 dBu contour; Cornerstone to 23,314 of the 62,891 people; and Triangle to 22,811 of the 56,403 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>99</sup> To support its localism claim, Triangle explains that it was established in 1994 and that one of its officers has been working on expanding its mission into the Madison area for several years, and, accordingly, established an office in Madison. The Commission has stated that to qualify for localism points, the headquarters or residences specified must be "a *primary* place of business or *primary* residence and not, for example, a post office box, lawyer's office, branch office, or vacation home, which would not provide sufficient contact between the station's decision and policy makers and the area to be served." See *NCE Order*, 15 FCC Rcd at 7410 (emphasis added); see also FCC Form 340, Instructions to Section IV, Question 1 ("a nongovernmental applicant is local if, within 25 miles of the reference coordinates for the proposed community of license, applicant has a school campus, its *primary* physical headquarters, or the *primary* residences of 75% of its governing board members."). Triangle fails to establish that its Madison office is its primary headquarters. Moreover, we note that Triangle has specified a different "local" address in each of its applications. See, e.g., FCC File No. BNPED-20100226AEH and *supra*, note 90.

its proposed 60 dBu contour would encompass 2,492 square kilometers with a population of 59,250; Cornerstone, 2,552 square kilometers and 62,891 people; and Triangle, 2,318 square kilometers and 56,403 people. No applicant is eligible for points under the best technical proposal criterion because Cornerstone's proposal to serve the largest area and population does not exceed GSER's next best proposal by at least 10 percent. Accordingly, Cornerstone is credited with a total of five points; GSER and Triangle are each not credited with any points.<sup>100</sup> Cornerstone is therefore the tentative selectee in Group 28.

74. **NCE Reserved Allotment Group 29.** This group consists of 12 applications proposing service on vacant Channel 298B at Terre Haute, Indiana, an allotment reserved by means of the third channel reservation standard. The applicants are: Indiana State University Board of Trustees ("ISU Trustees"), Terre Haute Seventh-Day Adventist Church ("THSDA"), The Light House Mission Ministries, Inc. ("Light House"), Terre Haute Bible Baptist Church, Inc. ("THBBC"), Illinois Bible Institute, Inc. ("IBI"), The Trustees of Indiana University ("IU Trustees"), Grace Public Radio ("GPR"), Indiana Educational Broadcast Corp. ("IEBC"), Word Power, Inc. ("WPI"), Community Broadcasting, Inc. ("CBI"), Hispanic Family Christian Network, Inc. ("HFCN"), and Prairie Air, Inc. ("Prairie"). Eleven of the 12 applicants demonstrate compliance with the third channel reservation criteria.<sup>101</sup> GPR does not, and, accordingly, is eliminated.<sup>102</sup> The remaining 11 applicants proceed to a point system analysis.

75. ISU Trustees, THSDA, Light House, THBBC, IU Trustees, IEBC, and WPI each claim points as an established local applicant. IBI, CBI, HFCN, and Prairie do not claim localism points. IEBC fails to sufficiently justify its localism claim, and, accordingly, will not receive points under this criterion.<sup>103</sup> Each applicant, with the exception of ISU Trustees, IBI, and WPI, claims two points for

<sup>100</sup> If the Commission had accepted Triangle's claim of three points for localism and two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, Cornerstone would still have prevailed as the tentative selectee under the second tie-breaker criterion.

<sup>101</sup> See ISU Trustees, THSDA, Light House, THBBC, IBI, IU Trustees, IEBC, WPI, CBI, HFCN, and Prairie Applications, Questions III(1), III(2), and associated exhibits. ISU Trustees claims that it would provide aggregated first and second NCE service to 95,424 of the 235,044 people encompassed within its proposed 60 dBu contour; THSDA to 134,169 of the 247,674 people; Light House to 96,838 of the 247,321 people; THBBC to 95,591 of the 246,569 people; IBI to 97,072 of the 248,896 people; IU Trustees to 97,830 of the 250,520 people; IEBC to 97,074 of the 248,339 people; WPI to 94,629 of the 247,839 people; CBI to 103,696 of the 251,155 people; HFCN to all 215,109 of the 215,109 people; and Prairie to 96,310 of the 248,374 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>102</sup> GPR certifies that it will provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people. According to its application, however, it will provide aggregated first and second NCE service to only 10,233 of the 254,353 people encompassed within its proposed 60 dBu contour, which is less than ten percent.

<sup>103</sup> To support its localism claim, IEBC explains that it was established in 1990 to deliver programming to schools in central Indiana, and in the process of expanding into the Terre Haute area, it established an office in Marshal, Indiana. The Commission has stated that to qualify for localism points, the headquarters or residences specified must be "a *primary* place of business or *primary* residence and not, for example, a post office box, lawyer's office, branch office, or vacation home, which would not provide sufficient contact between the station's decision and policy makers and the area to be served." See *NCE Order*, 15 FCC Rcd at 7410 (emphasis added); see also FCC Form 340, Instructions to Section IV, Question 1 ("a nongovernmental applicant is local if, within 25 miles of the reference coordinates for the proposed community of license, applicant has a school campus, its *primary* physical headquarters, or the *primary* residences of 75% of its governing board members."). IEBC fails to establish that its

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diversity of ownership. IU Trustees and IEBC each fail to provide the requisite support for their diversity claims, and, accordingly, will not be credited with points under this criterion.<sup>104</sup> None of the applicants claim points as statewide networks. With respect to technical parameters, ISU Trustees claims that its proposed 60 dBu contour would encompass 8,606 square kilometers with a population of 235,044; THSDA, 8,590 square kilometers and 247,674 people; Light House, 8,646 square kilometers and 247,321 people; THBBC, 8,509 square kilometers and 246,569 people; IBI, 8,675 square kilometers and 248,896 people; IU Trustees, 8,739 square kilometers and 250,520 people; IEBC, 8,596 square kilometers and 248,339 people; WPI, 8,512 square kilometers and 247,839 people; CBI, 8,540 square kilometers and 251,155 people; HFCN, 6,777 square kilometers and 215,109 people; and Prairie, 8,671 square kilometers and 248,374 people. No applicant is eligible for any points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least ten percent greater than the next best proposal. Accordingly, THSDA, Light House, and THBBC are credited with a total of five points each; ISU Trustees, IU Trustees, and WPI each receives three points; CBI, HFCN, and Prairie are each awarded two points; and IBI and IEBC are not credited with any points.<sup>105</sup> ISU Trustees, IBI, IU Trustees, IEBC, WPI, CBI, HFCN, and Prairie are therefore each eliminated, and THSDA, Light House, and THBBC proceed to a tie-breaker.

76. 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. THSDA, Light House, and THBBC certify that they each have no attributable interests in any radio authorizations. Accordingly, we proceed to the second issue considered in a tie-breaker – the number of pending radio applications attributable to each applicant. THSDA, Light House, and THBBC certify that they each have an attributable interest in one radio application. Accordingly, we proceed to the tie-breaker of last resort - mandatory timesharing. THSDA, Light House, and THBBC are thus each tentative selectees in Group 29 on a time-sharing basis.

77. **NCE Reserved Allotment Group 30.** This group consists of six applications proposing service on vacant Channel 281C3 at Council Grove, Kansas, an allotment reserved by means of the third channel reservation standard. The applicants are: Hutchinson Community College (“HCC”), Alleycat Communications (“Alleycat”), Community Broadcasting, Inc. (“CBI”), Gospel American Network (“GAN”), Hispanic Family Christian Network, Inc. (“HFCN”), and UFM Community Learning Center (“UFM”). Each applicant satisfies the third channel reservation criteria,<sup>106</sup> and the group proceeds to a point hearing.

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Marshal office is its primary headquarters. Moreover, we note that IEBC has specified a different “local” address in each of its applications. *See, e.g.*, FCC File Nos. BNPED-20100226AGN and 20071019AUG, and *supra*, note 51.

<sup>104</sup> Although IU Trustees pledges to divest FM translator station W236AE, Terre Haute, Indiana, it has not shown that its governing documents limit its ability to acquire other stations in the same area after divesting the FM translator station. IEBC fails to provide any support for its diversity claim.

<sup>105</sup> If the Commission had accepted IEBC’s claim of three points for localism and/or the claims of IU Trustees and IEBC for two points each for diversity of ownership, it would not have changed the outcome of this group. Specifically, THSDA, Light House, and THBBC would still have prevailed over IU Trustees and IEBC based on the tie-breaker criterion.

<sup>106</sup> *See* HCC, Alleycat, CBI, GAN, HFCN, and UFM Applications, Questions III(1), III(2), and associated exhibits. HCC claims that it would provide aggregated first and second NCE service to 7,516 of the 46,615 people encompassed within its proposed 60 dBu contour; Alleycat to 7,291 of the 42,077 people; CBI to 11,474 of the 16,511 people; GAN to 4,514 of the 4,614 people; HFCN to all 33,693 of the 33,693 people; and UFM to 7,797 of the 42,404 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

78. HCC is the only applicant to claim points as an established local applicant. Each applicant claims two points for diversity of ownership. GAN, however, fails to support its diversity claim, and, therefore, will not be awarded points under this criterion. No applicant claims points as a statewide network. With respect to technical parameters, HCC claims that its proposed 60 dBu contour would encompass 4,649 square kilometers with a population of 46,615; Alleycat, 4,783 square kilometers and 42,077 people; CBI, 4,756 square kilometers and 16,511 people; GAN, 961 square kilometers and 4,614 people; HFCN, 5,380 square kilometers and 33,693 people; and UFM, 4,879 square kilometers and 42,404 people. No applicant is eligible for points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best proposal. Accordingly, HCC is credited with a total of five points; Alleycat, CBI, HFCN, and UFM are each credited with two points; and GAN is not credited with any points.<sup>107</sup> HCC is the tentative selectee in Group 30.

79. **NCE Reserved Allotment Group 31.** This group consists of three applications proposing service on vacant Channel 233A at Smith Mills, Kentucky, an allotment reserved by means of the third channel reservation standard. The applicants are: Bohica, Saint Ann Radio Group, Inc. (“SARG”), and Music Ministries, Inc. (“MMI”). SARG and MMI each demonstrate compliance with the third channel reservation criteria,<sup>108</sup> and proceed to a point system analysis. Bohica does not and is therefore eliminated.<sup>109</sup>

80. SARG certifies that it is eligible for points as an established local applicant; MMI does not. SARG, however, fails to submit documentation to support its localism claim, and, therefore, does not qualify for points under this criterion. MMI claims two points for diversity of ownership; SARG does not. Neither applicant claims points as a statewide network. With respect to technical parameters, SARG’s proposed 60 dBu contour would encompass 2,029 square kilometers with a population of 30,588. MMI’s proposed 60 dBu contour would encompass 2,512 square kilometers with a population of 42,893. MMI qualifies for one point under the best technical proposal criterion because it will serve at least 10 percent more area and population than SARG. Accordingly, MMI is credited with a total of three points, and SARG is not credited with any points. MMI is therefore the tentative selectee in Group 31.

81. **NCE Reserved Allotment Group 32.** This group consists of three applications proposing service on vacant Channel 289C2 at Golden Meadow, Louisiana, an allotment reserved by means of the third channel reservation standard. The applicants are: Providence Educational Foundation, Inc. (“PEF”), Congregation of Our Lady of Prompt Succor Catholic Church, Golden Meadow, Louisiana (“PSCC”), and Hispanic Family Christian Network, Inc. (“HFCN”). Each applicant satisfies the third channel reservation criteria,<sup>110</sup> and the group proceeds to a point hearing.

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<sup>107</sup> If the Commission had accepted GAN’s claim of two points for diversity of ownership, it would not have changed the outcome of this group. Specifically, HCC’s credited total of five points would still have exceeded GAN’s claimed total of two points.

<sup>108</sup> See SARG and MMI Applications, Questions III(1), III(2), and associated exhibits. SARG claims that it would provide aggregated first and second NCE service to 19,758 of the 30,588 people encompassed within its 60 dBu contour; and MMI to 16,367 of the 42,893 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>109</sup> Bohica certifies that its proposal will not provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>110</sup> See PEF, PSCC, and HFCN Applications, Questions III(1), III(2), and associated exhibits. PEF claims that it would provide aggregated first and second NCE service to 13,405 of the 31,546 people encompassed within its 60 dBu contour; PSCC to 42,659 of the 44,604 people; and HFCN to all 32,715 of the 32,715 people. Thus, each

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82. PSCC is the only applicant to certify that it is eligible for points as an established local applicant. Each applicant claims two points for diversity of ownership. None of the applicants claim points as statewide networks. With respect to technical parameters, PEF claims that its proposed 60 dBu contour would encompass 1,809 square kilometers with a population of 31,546 people; PSCC, 5,104 square kilometers and 44,604 people; and HFCN, 6,335 square kilometers and 32,715 people. No applicant is eligible for points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best proposal. Accordingly, PSCC is credited with a total of five points; PEF and HFCN are credited with two points each. PSCC is therefore the tentative selectee in Group 32.

83. **NCE Reserved Allotment Group 34.** This group is comprised of four applications proposing service on vacant Channel 253C3 at Ringgold, Louisiana, an allotment reserved by means of the third channel reservation standard. The applicants are: The First Baptist Church of Castor (“FBCC”), Family Life Educational Foundation (“FLEF”), Tri-City Baptist Church (“TCBC”), and Smile FM (“Smile”). Each applicant demonstrates compliance with the third channel reservation criteria.<sup>111</sup> The entire group, therefore, proceeds to a point hearing.

84. FBCC is the only applicant to certify that it is eligible for points as an established local applicant. FBCC and Smile each claim two points for diversity of ownership; FLEF and TCBC do not. FBCC is the only applicant to claim points as a statewide network. Such points, however, are only available to applicants that have not received two points for diversity of ownership.<sup>112</sup> FBCC cannot receive points under both criteria. With respect to technical parameters, FBCC claims that its proposed 60 dBu contour would encompass 4,745 square kilometers with a population of 35,232; FLEF, 3,697 square kilometers and 32,797 people; TCBC, 2,302 square kilometers and 16,746 people; and Smile, 4,287 square kilometers and 34,180 people. No applicant is eligible for points under the best technical proposal criterion because FBCC’s proposal to serve the largest area and population does not exceed Smile’s next best proposal by at least 10 percent. Accordingly, FBCC is credited with a total of five points; Smile receives two points; and FLEF and TCBC are not credited with any points. FBCC is therefore the tentative selectee in Group 34.

85. **NCE MX Group 328.** This group originally consisted of ten applications proposing to serve five different communities in Florida. After conducting a fair distribution analysis that resulted in the elimination of five of the applications, the Commission conducted a point hearing analysis and identified a three-way tie between Help Save the Apalachicola River Group, Inc. (“HSARG”), Martin Bayou Management Corporation (“MBMC”), and Gulf Coast Community College (“GCC”).<sup>113</sup> The Commission thus proceeded to the first tie-breaker specified in the Rules – the number of radio station

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

<sup>111</sup> See FBCC, FLEF, TCBC, and Smile Applications, Questions III(1), III(2), and associated exhibits. FBCC claims that it would provide aggregated first and second NCE service to 19,015 of the 35,232 people encompassed within its proposed 60 dBu contour; FLEF to 18,804 of the 32,797 people; TCBC to 12,974 of the 16,746 people; and Smile to 18,321 of the 34,180 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>112</sup> See 47 C.F.R. § 73.7003(b)(3). Moreover, FBCC does not submit any information to support its claim that it qualifies as a statewide network.

<sup>113</sup> 52 Groups Comparative Order, *supra* note 24, 25 FCC Rcd at 8812-13.

authorizations attributable to each applicant. This tie-breaker resulted in the elimination of GCC.<sup>114</sup> HSARG and MBMC, however, remained tied so the Commission proceeded to the second tie-breaker – the number of pending radio applications attributable to each applicant. HSARG and MBMC remained tied even after this tie-breaker. Accordingly, the Commission proceeded to the tie-breaker of last resort – mandatory time sharing.<sup>115</sup> The Commission declared both HSARG and MBMC to be tentative selectees in Group 328 on a time-sharing basis, accepted for filing the HSARG application for a new NCE FM station at Port St. Joe, Florida (“HSARG Application”) and the MBMC application for a new NCE FM station at Mexico Beach, Florida (“MBMC Application”), and established a deadline for the filing of petitions to deny the applications.<sup>116</sup>

86. MBMC filed a Petition to Deny (“MBMC Petition”) the HSARG Application on July 28, 2010. MBMC contests the Commission’s tentative selection of the HSARG Application. MBMC notes that, during the February 2010, reserved allotment filing window, HSARG filed two applications for new NCE FM stations.<sup>117</sup> MBMC argues that HSARG thus had not one but three pending radio applications for purposes of the second tie-breaker applied by the Commission.<sup>118</sup> MBMC claims it should have prevailed over HSARG and urges the Commission to vacate the timesharing provisions of the *52 Groups Comparative Order*, dismiss or deny the HSARG Application, and grant solely the MBMC Application.<sup>119</sup>

87. HSARG filed an Opposition to Petition to Deny (“Opposition”) on August 10, 2010, acknowledging that it filed two additional applications for new NCE FM stations, but arguing that these two applications did not count for purposes of the second tie-breaker because they were not pending at the time it filed the HSARG Application.<sup>120</sup> HSARG also attacks the MBMC Application, asserting that MBMC did not adequately document its claims that it is entitled to points under the established local applicant and diversity of ownership criteria.<sup>121</sup> MBMC filed a Reply to Opposition to Petition to Deny (“Reply”) on August 20, 2010, restating its argument that it should have prevailed over HSARG.<sup>122</sup> MBMC asserts that the HSARG Opposition is procedurally defective and must be dismissed.<sup>123</sup>

88. At the outset, we address MBMC’s allegations that the Opposition is procedurally defective and must be dismissed. We decline to dismiss those portions of the Opposition that attack the MBMC Application. While HSARG could have raised these objections to the MBMC Application in a petition to deny prior to July 28, 2010, the Commission’s Rules permit the filing of informal objections at any time.<sup>124</sup> We will treat the portions of the Opposition that address the MBMC Application as an informal objection and address them herein.<sup>125</sup> In addition, we decline to dismiss the Opposition because

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<sup>114</sup> *Id.* at 8813.

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

<sup>116</sup> *Id.* at 8813, 8841.

<sup>117</sup> MBMC Petition at 3-4.

<sup>118</sup> *Id.* at 2, 6.

<sup>119</sup> *Id.* at 7.

<sup>120</sup> Opposition at 3-4.

<sup>121</sup> Opposition at 4-8.

<sup>122</sup> Reply at 3-4.

<sup>123</sup> Reply at 2-3.

<sup>124</sup> *See* 47 C.F.R. § 73.3587.

<sup>125</sup> We deny MBMC’s request that we strike these portions of the HSARG Objection because they are not responsive to matters set forth in the MBMC Petition. Reply at 3, *citing Aljir Broadcasting Co., Inc.*, Memorandum Opinion

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it allegedly did not comply with Section 1.52 of the Rules.<sup>126</sup> As noted, we are treating those portions of the Opposition that address the MBMC Application as an informal objection. The Opposition satisfies our requirements for informal objections.<sup>127</sup> Moreover, as discussed further below, we find the Petition moot and do not address the arguments made therein. Accordingly, we need not address whether those portions of the Opposition responsive to the arguments made in the Petition should be dismissed.

89. Next, we turn to the allegations that MBMC was not entitled to points under the diversity of ownership criterion. Every applicant claiming points for diversity of ownership must certify that the proposed station's service area would not overlap that of an attributable existing station, that its governing documents require that such diversity be maintained, and "that it has placed documentation of its diversity qualifications in a local public file and has submitted to the Commission copies of that documentation."<sup>128</sup> Certifications which require the applicant to submit documentation, but which are not supported with any such timely submitted documentation, cannot be credited.<sup>129</sup> The Commission repeatedly has rejected claims where the applicant certifies that it qualifies for points for diversity of ownership but fails to supply supporting information referred to in the certification.<sup>130</sup>

90. We find that, as HSARG asserts,<sup>131</sup> we erred in awarding MBMC points for diversity of ownership.<sup>132</sup> In the MBMC Application, MBMC certified that it was entitled to points under this criterion but, as HSARG notes, did not submit any supporting documentation.<sup>133</sup> Instead, MBMC stated that it would "file the by-law amendment through the Secretary's Office." We have found no evidence that MBMC made such a submission nor has MBMC provided any such evidence. Accordingly, we find that MBMC failed to submit sufficient documentation to support its claim and is not entitled to any points under the diversity of ownership criterion.

91. Our finding that MBMC is not entitled to points for diversity of ownership alters the outcome of the point hearing for this MX Group. Specifically, without the points awarded to it for diversity of ownership, MBMC is not tied with HSARG and GCC and does not proceed to even the first tie-breaker. HSARG thus prevails on the first tie-breaker because HSARG has fewer attributable radio station authorizations than GCC.<sup>134</sup> HSARG is the sole tentative selectee in NCE MX Group 328.

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and Order, 12 FCC 2d 163 (Rev. Bd. 1968) ("*Aljir*"). We note that *Aljir* enunciated the principle laid out in Section 1.45(c) of the Rules that replies are limited "to matters raised in the opposition[ ]." *Aljir*, 12 FCC 2d at 164. See also 47 C.F.R. § 1.45(c). However, Section 1.45(b), which governs oppositions, contains no such limitation. 47 C.F.R. § 1.45(b). As such, MBMC's reliance on *Aljir* is misplaced.

<sup>126</sup> Reply at 2.

<sup>127</sup> See 47 C.F.R. § 73.3587.

<sup>128</sup> See *FCC Form 340*, Instructions, Question IV(2). See also 47 C.F.R. § 73.7003(b)(2).

<sup>129</sup> *52 Groups Comparative Order*, 25 FCC Rcd at 8797.

<sup>130</sup> See, e.g., *id.* at 8800, 8801, 8804, 8806, 8811, 8813, 8818.

<sup>131</sup> Reply at 6-8.

<sup>132</sup> Without the two points awarded to MBMC under the diversity of ownership criterion, MBMC is eliminated on points alone. Accordingly, we need not address whether MBMC was entitled to the points awarded it under the established local applicant criterion.

<sup>133</sup> Reply at 6-8.

<sup>134</sup> We note that this renders moot the Petition, which argued that MBMC should have prevailed on the second tie-breaker. Accordingly, we dismiss the Petition.



92. **NCE MX Group 389.** This group consists of an application, filed by Available Media, Inc. (“AMI”), for a new NCE FM station at Tohajiilee Indian Reservation, New Mexico (“AMI Tohajiilee Application”)<sup>135</sup> and an application, filed by the Board of Regents, New Mexico Highlands University (“NMHU”), for a new NCE FM station at Milan, New Mexico (“NMHU Application”).<sup>136</sup> Also before us are a Petition to Deny the AMI Tohajiilee Application (“Petition”), filed by NMHU on July 27, 2010.<sup>137</sup> The AMI and NMHU Applications, as well as those filed by Better Public Broadcasting Association (“BPBA”), Misioneros Cristianos en Accion (“MCA”), Calvary Chapel of Albuquerque, Inc. (“CCA”), and Laguna Department of Education (“LDE”) were designated as NCE MX Group 389.<sup>138</sup> In its Petition, NMHU contests the tentative decision to grant the AMI Tohajiilee Application, as proposed in the Commission’s *52 Groups Comparative Order*.<sup>139</sup>

93. In Group 389, the Commission tentatively selected the AMI Tohajiilee Application for grant based on the tie-breaker criteria. Specifically, it found that AMI and NMHU were each entitled to five points under the point system, but that AMI prevailed under the first tie-breaker criterion.<sup>140</sup> The Commission then tentatively selected the AMI Tohajiilee Application and announced a 30-day period for filing petitions to deny that application. NMHU timely filed its Petition on July 27, 2010.

94. In its Petition, NMHU argues that the AMI Tohajiilee Application should be dismissed because AMI does not qualify for diversity of ownership points. NMHU states that AMI, in its application, pledged to divest “all but one of any overlapping applications, if directed by the Commission prior to the issuance of the first construction permit or, if not so directed, by applicant’s own initiative immediately on issuance of a first construction permit.”<sup>141</sup> NMHU contends that overlap existed between the principal community contours of the AMI Tohajiilee Application and the AMI NCE FM construction permit for Grants, New Mexico (the “Grants Construction Permit”), which was granted by Bureau staff on April 4, 2008.<sup>142</sup> Once the Grants Construction Permit was granted, NMHU argues, AMI was absolutely bound by its divestiture pledge to dismiss the “almost totally overlapping” AMI Tohajiilee

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<sup>135</sup> File No. BNPED-20071022BAR.

<sup>136</sup> File No. BNPED-20071022BPX.

<sup>137</sup> AMI filed an Opposition to Petition to Deny (“Opposition”) on August 6, 2010.

<sup>138</sup> See File Nos. BNPED-20071018AUQ (BPBA); BNPED-20071022ADA (MCA); BNPED-20071016AHZ (CCA); and BNPED-20071019ATP (LDE). These applications were subsequently dismissed by Public Notice on August 12, 2010. *Broadcast Actions*, Public Notice, Report No. 47298 (rel. Aug. 12, 2010). Because BPBA, MCA, CCA, and LDE did not appeal the dismissals of their applications, those actions are now final.

<sup>139</sup> See *52 Groups Comparative Order*, 25 FCC Rcd at 8829.

<sup>140</sup> In the *52 Groups Comparative Order*, AMI, NMHU, and CCA proceeded to a point hearing as each claimed a fair distribution preference based on combined first and second service; BPBA, MCA, and LDE did not claim a fair distribution preference and were eliminated. Next, AMI and NMHU each received three points as “established local applicants” and two points for diversity of ownership, while CCA received two points for diversity of ownership. Accordingly, AMI and NMHU proceeded to the tie-breaker, and based on the first tie-breaker criterion, AMI was identified as the tentative selectee. On the first tie-breaker, the applicant with the fewest authorizations prevails. AMI certified it had no attributable interests, and NMHU certified that it had one attributable interest in a radio authorization.

<sup>141</sup> Petition at 4.

<sup>142</sup> See File No. BNPED-20071018BBY. Specifically, NMHU alleges that its engineering review revealed an overlap of 80.7% by area and 96% by population. Petition at 4.

Application.<sup>143</sup> Moreover, NMHU claims that AMI engaged in misrepresentation and a lack of candor “by making explicit divestiture pledges in its Grants, New Mexico, and Tohajiilee, New Mexico, applications, failing to honor those pledges, and standing silent as it gained unfair windfall from error by the Commission.”<sup>144</sup> NMHU concludes that AMI’s tentative selectee status must, therefore, be rescinded.

95. In Opposition, AMI acknowledges that a small overlap, one-fifth of one percent of area with no population, existed between the AMI Tohajiilee Application and the Grants Construction Permit, but states the overlap is *de minimis* and that it reasonably believed in good faith that no overlap between the Grants Construction Permit and the AMI Tohajiilee Application existed.<sup>145</sup> AMI claims that the discrepancy between its overlap calculations and NMHU’s is due to NMHU’s incorrect use of the 60 dBu contour, rather than the 70 dBu, city grade contour, specified in the Commission’s Rules. AMI notes that upon discovery, it filed a minor modification application to the Grants Construction Permit which removed the overlap.<sup>146</sup> Alternatively, AMI declares that its by-laws preclude it from holding overlapping authorizations and, hence, it “was legally unqualified to hold the construction permit for Grants, and that the permit was void *ab initio*.”<sup>147</sup> AMI urges the Commission not to ascribe ownership of the Grants Construction Permit until its “curative amendment” is accepted. Additionally AMI, citing the Commission’s waiver and grant of diversity points to an NCE applicant subject to diversity attribution due to its overlapping Class D station, requests a waiver of the attribution rules “to the extent that such a waiver is necessary here.”<sup>148</sup> Lastly, AMI contends that the allegations of misrepresentation and lack of candor are meritless as the overlap was due to an accidental oversight, not deception.

96. Section 73.7003(b)(2) of the Rules,<sup>149</sup> provides that two points are awarded for local diversity of ownership if the principal community contours<sup>150</sup> of the applicant's proposed station and any other station in which any party to the application holds an attributable interest<sup>151</sup> do not overlap.<sup>152</sup> An applicant’s points cannot be enhanced by later changes, but may be reduced by said changes.<sup>153</sup>

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<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 7.

<sup>145</sup> Opposition at 3-4. According to AMI, it filed five applications, with two, one for Tohajiilee and one for Pagate, New Mexico (“AMI Pagate Application”), File No. BNPED-20071018BCD, having a significant overlap as they were collocated. When the AMI Pagate Application was dismissed on April 4, 2008, it believed the potential for overlap no longer existed. *Id.* at 2.

<sup>146</sup> See File No. BNPED-20100811AAA, which was granted by Bureau staff on September 13, 2010.

<sup>147</sup> *Id.* at 4. AMI indicates that, if the Commission attributes the Grants Construction Permit against it in this proceeding, it intends to petition in New Mexico state court for a ruling that its submission of the application for Grants was *ultra vires*. *Id.*

<sup>148</sup> *Id.* at 6. AMI cites to the *NCE Omnibus*, *supra* note 23, 22 FCC Rcd at 6120.

<sup>149</sup> 47 C.F.R. § 73.7003(b)(2).

<sup>150</sup> Per Section 73.7003(b)(2), “the principal community (city grade) contour is . . . the 3.16 mV/m for FM stations calculated in accordance with § 73.313(c) . . . .”

<sup>151</sup> 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>152</sup> As explained earlier, to be awarded such points, an applicant's governing documents must include a provision to maintain that diversity in the future. Any applicant requesting diversity of ownership points must submit to the

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97. AMI certified in the AMI Tohajiilee Application that it was eligible for diversity of ownership points.<sup>154</sup> It is undisputed that an overlap between the AMI Tohajiilee Application and the Grants Construction Permit existed when the AMI Tohajiilee Application was awarded two points for diversity of ownership.<sup>155</sup> Under existing precedent, although the area of overlap is small and currently unpopulated, we cannot consider the area to be *de minimis*<sup>156</sup> or find dispositive that the overlap was later eliminated by AMI's minor modification of the Grants Construction Permit.<sup>157</sup> Accordingly, when the Grants Construction Permit was issued on April 4, 2008, the AMI Tohajiilee Application lost its eligibility for diversity of ownership points. It cannot reclaim that eligibility by later eliminating the overlap with the Grants Construction Permit by virtue of modifying that permit. The fact that AMI's simultaneous interest in the AMI Tohajiilee Application and the Grants Construction Permit was in apparent conflict with the AMI by-laws does not in any way undermine the validity of the Commission action. AMI offers no Commission authority for its novel view, which, in any event, would be fundamentally inconsistent with the Commission's plenary licensing authority. Accordingly, we reject as meritless AMI's argument that this apparent conflict renders the Commission's grant of the Grants Construction Permit void *ab initio*.

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Commission 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. See FCC Form 340 Instructions, Question IV(2).

<sup>153</sup> *Id.*, Instructions, Section IV: "An applicant's qualification for points is determined as of the closing of the filing window assuming the applicant continues to qualify for all points claimed at the time of selection. Thus, points cannot be enhanced by changes made after the close of the deadline for filing of competing applications, but may be reduced by such changes."

<sup>154</sup> Exhibit 2C, AMI Tohajiilee Application.

<sup>155</sup> The Bureau's independent engineering review, using the principal community contour (city grade), as required by the Rules, revealed an overlap of 9.411 sq. km, and zero population.

<sup>156</sup> See e.g., *Mary V. Harris*, Letter, 22 FCC Rcd 18931, 18936 (MB 2007), *petition for reconsideration pending*, which notes:

*Assuming arguendo that an overlap of this size [less than one square kilometer] would be de minimis in the context of a request for waiver of an engineering or ownership prohibition, it does not automatically follow that the overlap is not cognizable for purposes of awarding a comparative preference. The Rules do not prohibit overlap of commonly controlled NCE stations. Rather, the Rules prefer applicants that do not propose to serve areas served by another commonly owned station. The Commission adopted the diversity of ownership preference to make it more likely that the listening public will hear a variety of viewpoints from different NCE sources. People living within HFC's area of overlap can already receive HFC's viewpoint. Although the overlap encompasses a relatively small area and population, we cannot find that HFC's proposal qualifies for the same preference awarded to parties like Harris which does not hold interests in any station that currently provides service to its proposed service area. Accordingly, we find that HFC does not qualify for the two points it claimed for this criterion, and that those points should be deducted from those awarded previously (emphasis added).*

<sup>157</sup> The Bureau's engineers have confirmed that the overlap was eliminated on September 13, 2010, when the minor modification application was granted.

98. We also find AMI's citation to a waiver granted to an NCE applicant with an overlapping Class D station inapposite to the circumstances presented here.<sup>158</sup> The Commission has recognized an exception "for any radio translator licensee that, in the particular application involved, is seeking a full service station to replace its existing translator station(s). Such applicants may exclude, on that application, any existing translator station that will cease operating when the proposed full service station commences operation."<sup>159</sup> Although in the *NCE Omnibus*, the Commission considered Henderson State University's ("HSU") pledge to divest its existing Class D facility as a grantable request for rule waiver -- HSU "proposed to substantially enhance service by substituting one [secondary service] facility for another, the goal of the exclusion rule"<sup>160</sup> -- AMI is not seeking to replace a Class D station with a full-service station. Thus, we do not find good cause to grant a waiver under the precedent cited by AMI. Nor do we find any other basis for granting AMI's waiver request. An applicant receives diversity points under the Commission's NCE comparative evaluation standards when its proposal does not overlap any other station in which the applicant's principal holds an attributable interest. The AMI Tohajiilee Application overlapped the Grants Construction Permit. AMI has not demonstrated that deviation from the rule would further the public interest more than strict compliance with Section 73.7003, which is designed simply to make it more likely that the listening public will be exposed to a variety of viewpoints. We therefore find that AMI is not entitled to the two points under the diversity of ownership criterion.<sup>161</sup> In light of the foregoing, we tentatively select NMHU to receive a construction permit for a new NCE FM station at Milan, New Mexico.

99. **NCE MX Group 393.** This group consists of applications filed by Mission Connecticut, Inc. ("MCI") and WAMC ("WAMC Application") for new NCE FM stations at Brewster, New York. Also before us is a Petition to Deny the MCI Application ("Petition"), filed by WAMC on July 27, 2010.<sup>162</sup> The MCI and WAMC Applications, as well as four other applications filed by other applicants, were mutually exclusive and designated as NCE MX Group 393.<sup>163</sup> In its Petition, WAMC contests the Commission's tentative decision to grant the MCI Application, as proposed in the *52 Groups Comparative Order*.<sup>164</sup>

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<sup>158</sup> See *supra* note 146.

<sup>159</sup> *NCE MO&O*, *supra* note 12, 16 FCC Rcd at 5102-03.

<sup>160</sup> *NCE Omnibus*, 22 FCC Rcd at 6120.

<sup>161</sup> 47 C.F.R. § 73.7003(b)(2). Additionally, although we need not do so in light of our action here, we find that AMI – which holds other Commission authorizations – has not made material misrepresentations or lacked candor to the Commission in the AMI Tohajiilee Application. Given the small size of the original overlap between the AMI Tohajiilee Application and the Grants Construction Permit, we accept AMI's explanation that it was simply unaware of the overlap. Moreover, we note that NMHU has offered no evidence of any intent on the part of AMI to misrepresent the overlap between the AMI Tohajiilee Application and the Grants Construction Permit.

<sup>162</sup> Additionally before us are an Opposition to Petition to Deny ("Opposition"), filed by MCI, and a Reply to Opposition to Petition to Deny ("Reply"), filed by WAMC.

<sup>163</sup> The other applicants and applications in Group 393 were: JCM Radio of New York, Inc. ("JCM"), BNPED-20071019BFN, Brewster, New York; New York Public Radio ("NYPR"), BNPED-20071019AQT, Brewster Hill, New York; Community Impact Foundation, Inc. ("CIF"), BNPED-20071012AEK, Brewster, Connecticut; and Danbury Community Radio, Inc. ("DCR"), BNPED-20071019AMW, Danbury, Connecticut. Each of these applications was dismissed by the staff on August 9, 2010. See *Broadcast Actions*, Public Notice, Report No. 47298 (Aug. 12, 2010).

<sup>164</sup> See *52 Groups Comparative Order*, 25 FCC Rcd at 8832.

100. In Group 393, the Commission tentatively selected the MCI Application for grant. Specifically, it found that MCI was entitled to five points under the point system – three points as an established local applicant and two points for diversity of ownership. WAMC, it determined, was entitled to four points – two for having the best technical proposal and two for local diversity of ownership.<sup>165</sup> Accordingly, MCI was designated the tentative selectee in Group 393.

101. In its Petition, WAMC alleges that MCI is not entitled to the three points it received for being a local applicant, primarily because MCI did not claim qualification for local applicant points in its application as originally filed, but instead, only amended its application to claim the points, by checking the “Yes” box, in an amended application, filed February 4, 2008, more than three months after the close of the filing window.<sup>166</sup> WAMC also alleges that MCI was not entitled to the two points it received for diversity of ownership because its governing documents do not comport with Section 73.7003 of the Rules.<sup>167</sup>

102. In its Opposition, MCI asserts that the Commission correctly accepted its amendment curing its failure to ask for local applicant points either in its Application or at any other time prior to the close of the filing window. It also claims that its Articles of Incorporation are sufficient to support the claimed local applicant and diversity points. In reply, WAMC reiterates its contention that MCI should not be awarded either localism or diversity points.

103. We need only consider WAMC’s localism argument to conclude that the MCI application should be dismissed on point system grounds. In its original application, MCI checked the “No” box in Section IV, Question 1, stating that it did not wish to receive consideration as an established local applicant. It attempted to revise this certification to “Yes” in its amended application, filed in February 2008, well after the close of the filing window. An NCE applicant’s qualifications for points is established at the close of the filing window and cannot be enhanced after that time.<sup>168</sup> The Bureau has correctly rejected amendments that enhance applicants’ comparative standings although the amendments allegedly served to only correct mistaken data or errors in the initial application.<sup>169</sup> We therefore find that

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<sup>165</sup> A third applicant, NYPR, was credited with only two points, and the three other applicants (JCM, CIF and DCR) were eliminated.

<sup>166</sup> WAMC cites 47 C.F.R. § 73.7003(e) and notes that the Commission prohibits applicants from enhancing their point system claims or qualifications as established at the time of filing and the close of the filing window. Petition at 7.

<sup>167</sup> Petition at 4.

<sup>168</sup> See Instructions for FCC Form 340, Section IV (“The applicant’s qualification for points is determined as of the closing of the filing window. . . . Thus, points cannot be enhanced by changes made after the close of the deadline for filing of competing applications, but may be reduced by such changes); 47 C.F.R. § 73.7003(e) (“For applications filed after April 21, 2000, an applicant’s maximum qualifications are established at the time of application”); *NCE Order*, *supra* note 12, 15 FCC Rcd at 7423 (noting that point system documentation filed at the Commission should be submitted “concurrently with filing”).

<sup>169</sup> See *Network of Glory*, Letter, 25 FCC Rcd 7311 (MB 2007) (finding that applicant’s amendment was a prohibited attempt to enhance its comparative position when the amendment attempted to correct allegedly erroneous population numbers). See also *Threshold Fair Distribution Analysis of 28 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in October 2007 Window*, Memorandum Opinion and Order, 24 FCC Rcd 12390, 12394-12395 (MB 2009) (finding that an applicant’s amendment was a prohibited attempt to enhance its comparative position when the initial application erroneously used population data from a different community than that which applicant proposed to serve).

MCI is not entitled to the three points under the “established local applicant” criterion.<sup>170</sup> In light of the foregoing, we tentatively select WAMC to receive a construction permit for a new NCE FM station at Brewster, New York.

104. **NCE MX Group 394.** This group consists of an application filed by Long Island ACORN (“LIA”) for a new NCE FM station at Riverhead, New York (“LIA Application”)<sup>171</sup> and an application, filed by Community Bible Church, Inc. (“CBC”), for a new NCE FM station at Quogue, New York (“CBC Application”).<sup>172</sup> Also before us is a Petition to Deny the LIA Application (“Petition”), filed by CBC on July 28, 2010.<sup>173</sup> The LIA and CBC Applications, as well as those filed by Oscar Aguero Ministry (“OAM”), St. Joseph Church (“St. Joseph”), Hamptons Community Radio Corporation (“HCRC”), and Sacred Heart University, Inc. (“SHU”),<sup>174</sup> were designated as NCE MX Group 394.

105. In Group 394, the Commission identified LIA as the tentative selectee based on the tie-breaker criteria.<sup>175</sup> Specifically, it found that LIA and CBC were each entitled to five points under the point system but that LIA prevailed under the tie-breaker criteria.<sup>176</sup> In its Petition, CBC asserts that LIA is not entitled to three “established local applicant” points because neither the headquarters of LIA, nor the residences of seventy-five percent of its board members, are located within 25 miles of the proposed community of license, Riverhead, New York.<sup>177</sup> LIA did not respond to the Petition.

106. LIA certified that it has maintained its headquarters at 91 North Frankline Street, Hempstead, New York, without interruption since 1996.<sup>178</sup> In addition, as CBC correctly observes, LIA’s three principals reside in Hempstead, New York.<sup>179</sup> Hempstead, New York, however, is located more than 50 miles from the reference coordinates for Riverhead, New York. The Bureau’s engineering

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<sup>170</sup> 47 C.F.R. § 73.7003(a)(i). As a result of the decision to grant WAMC’s Petition and remove the three points previously awarded to MCI for being an established local applicant, we need not reach the issues raised in the Petition with regard to our award of two points to MCI for local diversity of ownership.

<sup>171</sup> File No. BNPED-20071019AVG.

<sup>172</sup> File No. BNPED-20071015AHH.

<sup>173</sup> LIA did not file an Opposition to the Petition.

<sup>174</sup> See File Nos. BNPED-20071015AGE, 20071019BAR, 20071022AAS, and BNPED-20071022BNA. These applications were subsequently dismissed by Public Notice on August 12, 2010. *Broadcast Actions*, Public Notice, Report No. 47298 (rel. Aug. 12, 2010). Because OAM, St. Joseph, HCRC, and SHU did not appeal the dismissals of their applications, those actions are now final.

<sup>175</sup> See *52 Groups Comparative Order*, 25 FCC Rcd at 8850. We note that in the *52 Group Comparative Order*, CBC is incorrectly referred to as “Community Bible College.”

<sup>176</sup> In the *52 Groups Comparative Order*, LIA and CBC each received three points as “established local applicants” and two points for diversity of ownership, while SHU received two points, and OAM, St. Joseph, and HCRC received no points. Accordingly, LIA and CBC proceeded to a tie-breaker, and based on the first tie-breaker criterion, LIA was identified as the tentative selectee. The applicant with the fewest authorizations prevails. CBC certified that it had one attributable interest; LIA certified that it had no attributable interests.

<sup>177</sup> Petition at 1.

<sup>178</sup> See LIA Application at Exhibit 12.

<sup>179</sup> Petition at 3; see also LIA Application at Section II, Question 6.

staff has corroborated CBC's showing. We therefore find that LIA is not entitled to the three points under the "established local applicant" criterion.<sup>180</sup> We therefore rescind the portion of our decision which tentatively selected LIA by means of a tie-breaker, and, instead, identify CBC as the tentative selectee in Group 394.

107. **NCE MX Group 417.** This group consists of (1) an application filed by Rapid City Columbian Club, Inc. ("RCCC") for a new NCE FM station at Box Elder, South Dakota ("RCCC Application"),<sup>181</sup> (2) an application filed by South Dakota School of Mines and Technology ("SDSMT") for a new NCE FM station at Rapid City, South Dakota ("SDSMT Application"),<sup>182</sup> and (3) an application filed by Three Angels Seventh Day Adventist Church ("Three Angels") for a new NCE FM station at Rapid City, South Dakota ("Three Angels Application").<sup>183</sup> Also before us are: (4) a Petition to Deny the RCCC Application, filed by SDSMT on September 2, 2010 (the "RCCC Petition");<sup>184</sup> (5) Petitions to Deny the Three Angels Application, filed by SDSMT and RCCC on September 2, 2010 (the "Three Angels Petitions"); and (6) a "Motion to Dismiss Application" filed by Three Angels on October 22, 2010, requesting dismissal of its application ("Motion").<sup>185</sup>

108. The RCCC, SDSMT, and Three Angels Applications, as well as five other applications,<sup>186</sup> were mutually exclusive and designated as NCE MX Group 417. In the Commission's *26 Groups Comparative Order*,<sup>187</sup> the Commission eliminated five applications based on the point system analysis,<sup>188</sup> found the remaining three applicants (RCCC, SDSMT and Three Angels) to be tied,<sup>189</sup> and proceeded to the tie-breaker mechanism. After application of tie-breaker procedures, the Commission determined that the three applicants were to engage in mandatory timesharing. The Commission accepted the three applications for filing and established a 30-day period for filing petitions to deny. SDSMT timely filed the RCCC Petition on September 2, 2010. In its Petition, SDSMT contests the Commission's tentative decision to include RCCC as a participant in the mandatory timesharing.

<sup>180</sup> 47 C.F.R. § 73.7003(a)(i).

<sup>181</sup> File No. BNPED-20071022BVA.

<sup>182</sup> File No. BNPED-20071018AML.

<sup>183</sup> File No. BNPED-20071022BCG.

<sup>184</sup> RCCC filed an Opposition to the RCCC Petition on September 15, 2010.

<sup>185</sup> Motion at 1.

<sup>186</sup> The five others were: Saidnewsfoundation ("SNF"), BNPED-20071017AIW, Rapid City, South Dakota; Wilbur Gospel Communications and Foundation ("Wilbur"), BNPED-20071015AEY, Rapid City, South Dakota; Tightrope Broadcasting, Inc. ("Tightrope"), BNPED-20071022BAA, Rapid City, South Dakota; The Positive Radio Network ("Positive"), BNPED-20071012AJT, Box Elder, South Dakota; and St. Paul Cultural Broadcasting, Inc. ("St. Paul"), BNPED-20071022AKW, Custer, South Dakota. Each of these applications was dismissed by the staff on September 10, 2010. See *Broadcast Actions*, Public Notice, Report No. 47321 (Sep. 15, 2010).

<sup>187</sup> See *Comparative Consideration of 26 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations filed in the October 2007 Filing Window*, Memorandum Opinion and Order, 25 FCC Rcd 11108 (2010) ("*26 Group Comparative Order*").

<sup>188</sup> Positive, Wilbur and SNF were credited with no points and St. Paul and Tightrope were credited with two points each. *26 Groups Comparative Order*, 25 FCC Rcd at 11122.

<sup>189</sup> The three applicants were awarded three points each as established local applicants and two points for diversity of ownership. *Id.*

109. SDSMT contends that the award of points to RCCC as an “established local applicant” and for “diversity of ownership” was erroneous. Specifically, SDSMT argues that RCCC failed to provide supporting information with its Application regarding its certification under the “established local applicant” and “diversity of ownership” comparative standards and was not entitled to points under those criteria.<sup>190</sup> It also asserts that the grant of RCCC’s application will undermine local diversity as that application was a “cookie cutter” application almost identical to numerous other applications submitted by purported “affiliates” of the Eternal Word Television Network (“EWTN”).<sup>191</sup> Moreover, SDSMT states that all of RCCC’s programming will originate with a source far from the community of license, that RCCC’s President had told SDSMT that it filed the RCCC Application on behalf of the Catholic Diocese of Western South Dakota (the “Diocese”),<sup>192</sup> and that he also informed SDSMT that he could not negotiate the timesharing agreement mandated by the Commission without coordinating it with the Diocese and the Archbishop of Denver.<sup>193</sup>

110. In its Opposition, RCCC contends, without support, that the Commission’s staff “routinely accepts amendments to supply missing documentation so long as the evidence shows the eligibility itself was timely” and that its amendment, supplied in September of 2010, clearly showed that it was adopted prior to the filing the RCCC Application.<sup>194</sup> RCCC also states that there is no local origination requirement for an applicant claiming points as an established local entity.<sup>195</sup> Further, it states that its post-filing window amendment, which included its governing documents, is evidence “that the eligibility existed at the time of the application’s submission that is required to have been timely.”<sup>196</sup> Finally, RCCC supplies a Declaration of RCCC’s President denying the conversations alleged by SDSMT.<sup>197</sup>

111. We need only consider SDSMT’s diversity argument to conclude that the RCCC Application should be dismissed on point system grounds. RCCC is misguided in arguing that, although it did not submit documentation in the RCCC Application supporting a claim of diversity points, it was

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<sup>190</sup> Petition at 2-3, 7. SDSMT claims that, in the *26 Groups Comparative Order*, the Commission dismissed applicants in 13 of the mutually exclusive groups – including one of the applications in Group 417, SNF – for failing to provide such documentation, but “inexplicably failed” to dismiss RCCC’s application on the same basis. *Id.* at 7 n. 11.

<sup>191</sup> In this regard it attaches several other applications filed by such “affiliates” that contain “Nature and Educational Purpose” statements identical to that filed by RCCC, except for the name of the applicant and proposed community, and identical programming guides. Petition at Exhibit A.

<sup>192</sup> Petition at 5. SDSMT also states that this individual did not know what programming would air on the station. *Id.*

<sup>193</sup> Petition at 6 and Declaration of Timothy G. Henderson, Vice President of Business and Administration, SDSMT.

<sup>194</sup> Opposition at 4. In the referenced amendment, filed on September 1, 2010, RCCC includes a copy of the documentation of a change in RCCC’s governing documents supporting its claim of points as an established local applicant and for diversity of ownership. It acknowledges that “it only recently came to the [sic] attention that the documentation of this change in the by-laws of the applicant was inadvertently left out of the original submission.” RCCC Application, September 1, 2010 amendment, Exhibit 1.

<sup>195</sup> Opposition at 3-4.

<sup>196</sup> *Id.* at 4.

<sup>197</sup> Opposition, Sworn Declaration of Gregory Scherr.



entitled to those points based on its governing documents at the time its application was filed and was entitled to provide the documentation in a post-filing window amendment. Indeed, Section IV, Question 2 of the FCC Form 340 requires applicants to certify that such documentation *has been submitted* to the Commission.<sup>198</sup> Thus, RCCC improperly certified its eligibility for diversity credits because it did *not* submit such documentation with its application. Moreover, RCCC was not entitled to support its claim to diversity points in a post-filing window amendment. It is well established that an NCE applicant's qualifications for points is established at the close of the filing window and cannot be enhanced after that time.<sup>199</sup> As a consequence, RCCC failed to establish its maximum qualifications "at the time of application," and, thus, should not have proceeded to the tie-breaker procedures with SDSMT and Three Angels.<sup>200</sup>

112. The other participant in the Group 417 tie-breaker was Three Angels. In its Motion, Three Angels requests the dismissal of its Application with prejudice. In support of its Motion, Three Angels states that "[t]he Church has been dissolved and no longer functions as an independent entity." It has supplied the declaration regarding consideration required by Section 73.3525(c) of the Rules.<sup>201</sup> In light of the foregoing, we will dismiss the RCCC Application, grant the Motion, and dismiss the Three Angels Application,<sup>202</sup> and grant the SDSMT Application.

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<sup>198</sup> See, e.g., FCC Form 340, Section IV, Question 2 ("Applicant certifies that ... its governing documents require that such diversity be maintained, and that it ... has submitted to the Commission copies of the documentation").

<sup>199</sup> See Instructions for FCC Form 340, Section IV ("The applicant's qualification for points is determined as of the closing of the filing window. . . . Thus, points cannot be enhanced by changes made after the close of the deadline for filing of competing applications, but may be reduced by such changes. . . . An applicant claiming points for diversity of ownership must place supporting documentation in a local public inspection file and submit to the Commission copies of the documentation."); 47 C.F.R. § 73.7003(e) ("For applications filed after April 21, 2000, an applicant's maximum qualifications are established at the time of application"); *Procedures Notice*, 22 FCC Rcd at 15050 (announcing filing requirements, noting that applicants must submit documentation in support of point system claims to the Commission and strongly recommending that this documentation be submitted as exhibits to the application); *NCE Order*, 15 FCC Rcd at 7423 (noting that point system documentation filed at the Commission should be submitted "concurrently with filing"). See also *26 Groups Comparative Order*, 25 FCC Rcd at 11121, 11122, and 11124 (denying diversity credit for failure to include corporate governing documents requiring diversity to be maintained).

<sup>200</sup> In light of our determination here, we need not address SDSMT's additional arguments.

<sup>201</sup> 47 C.F.R. § 73.3525(c).

<sup>202</sup> Petitions to deny were filed by RCCC and SDSMT against the Three Angels Application. In view of our dismissal of Three Angels Application, these petitions will be dismissed as moot.

## V. NEXT STEPS

113. **Acceptability Studies and Filing of Petitions.** The staff has examined the applications of each tentative selectee for application defects.<sup>203</sup> Each tentative selectee identified in this Order and its Appendix appears to be fully qualified to become the licensee of the new or modified NCE FM station it has proposed. We tentatively conclude that the grant of these applications would serve the public interest, convenience and necessity. Accordingly, the tentative selectees are accepted for filing. This triggers a 30-day period for the filing of petitions to deny.

114. 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>204</sup>

115. **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.

116. 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>205</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>206</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.

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<sup>203</sup> If a tentative selectee's application is found unacceptable for filing, it is returned. The applicant is then given one opportunity to submit a curative amendment. See 47 C.F.R. § 73.3522(b)(2). A tentative selectee that is unable to cure the defect with a minor amendment is disqualified, and the applicant with the next highest point tally becomes the new tentative selectee. See 47 C.F.R. § 73.7004(d).

<sup>204</sup> See *id.* § 1.106 (a) (1). See also *Patrick J. Vaughn, Esq.*, Letter, 22 FCC Rcd 11165 (MB 2007).

<sup>205</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>206</sup> See generally *NCE Omnibus*, 22 FCC Rcd at 6162 n.230 (2007) (standards for staff evaluation of petitions).

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

## VI. ORDERING CLAUSES

118. 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>207</sup> If any decision in this *Memorandum Opinion and Order* is declared invalid for any reason, the remaining portions shall be severable from the invalid part and SHALL REMAIN in full force and effect to the fullest extent permitted by law.

119. **NCE Reserved Allotment Group 1.** Accordingly, IT IS ORDERED, That Anniston Seventh-Day Adventist Church is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Anniston, Alabama, 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 Covenant Communications, Inc. (File No. BNPED-20100222ABJ), Equality Broadcasting Network (File No. BNPED-20100224ACV), The Moody Bible Institute of Chicago (File No. BNPED-20100225AAY), Serendipity Educational Broadcasting, Inc. (File No. BNPED-20100225ADF), Board of Trustees of Jacksonville State University (File No. BNPED-20100226AFB), Old Time Gospel Ministries (File No. BNPED-20100226AFM), and Smile FM (File No. BNPED-20100226AIC), and TO GRANT the application of Anniston Seventh-Day Adventist Church (File No. BNPED-20100226ABT) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

120. **NCE Reserved Allotment Group 2.** Accordingly, IT IS ORDERED, That Arizona Board of Regents for the Benefit of the University of Arizona is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Pima, Arizona, 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 World Radio Network, Inc. (File No. BNPED-20100226AAT) and Cochise Community Radio Corporation (File No. BNPED-20100226ABX), and TO GRANT the application of Arizona Board of Regents for the Benefit of the University of Arizona (File No. BNPED-20100225AAU) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

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<sup>207</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).

121. **NCE Reserved Allotment Group 3.** Accordingly, IT IS ORDERED, That Campesinos Sin Fronteras, Yuma Fine Arts Association, Inc., and Radio Revista Nuevo Amanecer Ministries are TENTATIVELY SELECTED to be awarded construction permits ON A TIMESHARING BASIS for new NCE FM stations in Somerton, Arizona. The three applications ARE ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentatively selected applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Arizona Western College (File No. BNPED-20100223AAU), Grace Public Radio (File No. BNPED-20100225AAD), Relevant Media, Inc. (File No. BNPED-20100226ABJ), Centro Cristiano Vida Abundante, Inc. (File No. BNPED-20100226ADZ), Smile FM (File No. BNPED-20100226AFO), and Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AHP). We further direct the staff to provide the tentatively selected applicants 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 Campesinos Sin Fronteras (File No. BNPED-20100226AGI), Yuma Fine Arts Association, Inc. (File No. BNPED-20100226AIP), and Radio Revista Nuevo Amanecer Ministries (File No. BNPED-20100226AIW) CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service. If the applicants are unable to reach a voluntary timesharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate timesharing arrangement.

122. **NCE Reserved Allotment Group 4.** Accordingly, IT IS ORDERED, That Versailles Community Broadcasting, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Willcox, Arizona, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Grace Public Radio (File No. BNPED-20100224AAM), Arizona Board of Regents for the Benefit of the University of Arizona (File No. BNPED-20100225AAT), World Radio Network, Inc. (File No. BNPED-20100226AAV), and Cochise Community Radio Corporation (File No. BNPED-20100226AEN), and TO GRANT the application of Versailles Community Broadcasting, Inc. (File No. BNPED-20100225ABV) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

123. **NCE Reserved Allotment Group 6.** Accordingly, IT IS ORDERED, That Humboldt State University Advancement Foundation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in McKinleyville, California, and its application is ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Grace Public Radio (File No. BNPED-20100224AAZ), and TO GRANT the application of Humboldt State University Advancement Foundation (File No. BNPED-20100223AEF) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

124. **NCE Reserved Allotment Group 7.** Accordingly, IT IS ORDERED, That Farms of Amador, Calvary Chapel of Amador County, Inc., Sutter Hill Seventh-Day Adventist Church, and Sonora

Sierra Heritage Foundation are TENTATIVELY SELECTED to be awarded construction permits ON A TIMESHARING BASIS for new NCE FM stations in Sutter Creek, California. The four applications ARE ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentatively selected applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Mother Lode Public Radio (File No. BNPED-20100222AAK), Grace Public Radio (File No. BNPED-20100222ADI), Educational Media Foundation (File No. BNPED-20100225ADS), Indiana Educational Broadcast Corp. (File No. BNPED-20100226AGN), and Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AHQ). We further direct the staff to provide the tentatively selected applicants 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 Farms of Amador (File No. BNPED-20100224ACJ), Calvary Chapel of Amador County, Inc. (File No. BNPED-20100225AAO), Sutter Hill Seventh-Day Adventist Church (File No. BNPED-20100225ADX), and Sonora Serra Heritage Foundation (File No. BNPED-20100226AJU) CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service. If the applicants are unable to reach a voluntary timesharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate timesharing arrangement.

125. **NCE Reserved Allotment Group 8.** Accordingly, IT IS ORDERED, That Sacred Heart Roman Catholic Parish is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Westley, California, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, 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 Modesto Peace/Life Center (File No. BNPED-20100224ABX), Radio Bilingue, Inc. (File No. BNPED-20100225ACV), Ondas de Vida Network, Inc. (File No. BNPED-20100226AAE), Crossroads Church, an Evangelical Free Church (File No. BNPED-20100226ACV), Centro Cristiano Vida Abundante, Inc. (File No. BNPED-20100226ADX), Calvary Chapel of Turlock, Inc. (File No. BNPED-20100226AGO), and Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AHR), and TO GRANT the application of Sacred Heart Roman Catholic Parish (File No. BNPED-20100226AJO) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

126. **NCE Reserved Allotment Group 9.** Accordingly, IT IS ORDERED, That Montrose Christian Broadcasting Corporation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Olathe, Colorado, 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 JKJ Educational Foundation (File No. BNPED-20100226ACN), Calvary Chapel of Montrose (File No. BNPED-20100226ADC), Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AHU), and Grand Valley Public Radio, Inc. (File No. BNPED-20100226AJB), and TO GRANT the application of Montrose Christian Broadcasting Corporation (File No. BNPED-20100226AFP) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

127. **NCE Reserved Allotment Group 10.** Accordingly, IT IS ORDERED, That NC Friends Broadcasting, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Olathe, Colorado, 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 Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AHT) and TO GRANT the application of NC Friends Broadcasting, Inc. (File No. BNPED-20100226AEF) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

128. **NCE Reserved Allotment Group 11.** Accordingly, IT IS ORDERED, That Multicare Foundation, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Big Pine Key, Florida, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Classical South Florida, Inc. (File No. BNPED-20100225ACK) and Serendipity Educational Broadcasting, Inc. (File No. BNPED-20100225ADK), and TO GRANT the application of Multicare Foundation, Inc. (File No. BNPED-20100224ACT) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

129. **NCE Reserved Allotment Group 12.** Accordingly, IT IS ORDERED, That Help Save the Apalachicola River Group, Inc. and Florida Community Radio, Inc. are TENTATIVELY SELECTED to be awarded construction permits ON A TIMESHARING BASIS for new NCE FM stations in Horseshoe Beach, Florida. The two applications ARE ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentatively selected applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Better Public Broadcasting Association (File No. BNPED-20100225AAW), Serendipity Educational Broadcasting, Inc. (File No. BNPED-20100225ADL), Southern Cultural Foundation (File No. BNPED-20100225ADT), Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AHN), and Smile FM (File No. BNPED-20100226AIH). We further direct the staff to provide the tentatively selected applicants 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 Help Save the Apalachicola River Group, Inc. (File No. BNPED-20100226ACU) and Florida Community Radio, Inc. (File No. BNPED-20100226AIK) CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service, and PROVIDED THAT, Florida Community Radio, Inc. must surrender its license for low power FM station WMJB-LP, Lake City, Florida, prior to commencement of program tests of the full service NCE FM station. If the applicants are unable to reach a voluntary timesharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate timesharing arrangement.

130. **NCE Reserved Allotment Group 13.** Accordingly, IT IS ORDERED, That Learning Avenue, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM

station in Live Oak, Florida, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Grace Public Radio (File No. BNPED-20100224ABU), Southern Cultural Foundation (File No. BNPED-20100225ADU), Florida Community Radio, Inc. (File No. BNPED-20100226AAB), Help Save the Apalachicola River Group, Inc. (File No. BNPED-20100226ACT), and Call Communications Group, Inc. (File No. BNPED-20100226AJV), and TO GRANT the application of Learning Avenue, Inc. (File No. BNPED-20100226AJE) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

131. **NCE Reserved Allotment Group 14.** Accordingly, IT IS ORDERED, That Florida Community Radio, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Otter Creek, Florida, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Better Public Broadcasting Association (BNPED-20100225AAX) and Citrus County Association for Retarded Citizens, Inc., and TO GRANT the application of Florida Community Radio, Inc. (File No. BNPED-20100226AGX) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service, and PROVIDED THAT, Florida Community Radio, Inc. must surrender its license for low power FM station WMJB-LP, Lake City, Florida, prior to commencement of program tests of the full service NCE FM station.

132. **NCE Reserved Allotment Group 15.** Accordingly, IT IS ORDERED, That Calvary Chapel Heartland, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Reynolds, Georgia, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, 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 Serendipity Educational Broadcasting, Inc. (File No. BNPED-20100225ADE) and Fort Valley State University (File No. BNPED-20100226AEG), and TO GRANT the application of Calvary Chapel Heartland, Inc. (File No. BNPED-20100224ABA) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service, and PROVIDED THAT, Calvary Chapel Heartland, Inc. must surrender its license for low power FM station WLVN-LP, Fort Valley, Georgia, prior to commencement of program tests of the full service NCE FM station.

133. **NCE Reserved Allotment Group 16.** Accordingly, IT IS ORDERED, That St. Mary Radio d/b/a Radio Apostolate for the Heartland and Fairfield Youth Advocacy, Inc. are TENTATIVELY SELECTED to be awarded construction permits ON A TIMESHARING BASIS for new NCE FM stations in Keosauqua, Iowa. The two applications ARE ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentatively selected applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of

Serendipity Educational Broadcasting, Inc. (File No. BNPED-20100225ADE) and Extreme Grace Media, Inc. (File No. BNPED-20100226AAR). We further direct the staff to provide the tentatively selected applicants 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 St. Mary Radio d/b/a Radio Apostolate for the Heartland (File No. BNPED-20100226ADO) and Fairfield Youth Advocacy, Inc. (File No. BNPED-20100226AIE) CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service, and PROVIDED THAT, Fairfield Youth Advocacy, Inc. must surrender its license for LPFM station KRUU-LP, Fairfield, Iowa, prior to commencement of program tests of the full service NCE FM station. If the applicants are unable to reach a voluntary timesharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate timesharing arrangement.

134. **NCE Reserved Allotment Group 17.** Accordingly, IT IS ORDERED, That Iowa State University of Science & Technology is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Merville, Iowa, 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 JKJ Educational Foundation (File No. BNPED-20100226ACO), Public Education Network (File No. BNPED-20100226ADR), Hammock Educational and Environmental Community Services (File No. BNPED-20100226AED), Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AHM), and Alleycat Communications (File No. BNPED-20100226AJN), and TO GRANT the application of Iowa State University of Science & Technology (File No. BNPED-20100225AAV) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

135. **NCE Reserved Allotment Group 18.** Accordingly, IT IS ORDERED, That Extreme Grace Media, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Rudd, Iowa, 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 Network of Glory, Inc. (File No. BNPED-20100219AAD) and Minn-Iowa Christian Broadcasting, Inc. (File No. BNPED-20100222ADH), and TO GRANT the application of Extreme Grace Media, Inc. (File No. BNPED-20100226AAQ) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

136. **NCE Reserved Allotment Group 19.** Accordingly, IT IS ORDERED, That Blessed Sacrament Catholic Church of Ontario, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Weiser, Idaho, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Grace Public Radio (BNPED-20100225AAM), Hispanic Family Christian Network, Inc.



(BNPED-20100226AHL), and Tool Shed PDX (File No. BNPED-20100226AJX), and TO GRANT the application of Blessed Sacrament Catholic Church of Ontario, Inc. (File No. BNPED-20100226ACY) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

137. **NCE Reserved Allotment Group 20.** Accordingly, IT IS ORDERED, That Canton Seventh-Day Adventist Church is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Canton, Illinois, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Grace Public Radio (File No. BNPED-20100223AAC), Illinois State University (BNPED-20100226ADU), Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AHA), and Indiana Educational Broadcast Corp. (File No. BNPED-20100226AIA), and TO GRANT the application of Canton Seventh-Day Adventist Church (File No. BNPED-20100224ACL) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

138. **NCE Reserved Allotment Group 21.** Accordingly, IT IS ORDERED, That Our Catholic Family Radio is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Cedarville, Illinois, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, 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 Network of Glory, Inc. (File No. BNPED-20100222ACM), Community Broadcasting, Inc. (File No. BNPED-20100226AAL), and Shannon Baptist Church (File No. BNPED-20100226AIV), and TO GRANT the application of Our Catholic Family Radio (File No. BNPED-20100226ACW) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

139. **NCE Reserved Allotment Group 22.** Accordingly, IT IS ORDERED, That Prairie Air, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Clifton, Illinois, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, 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 Serendipity Educational Broadcasting, Inc. (File No. BNPED-20100225ADG) and TO GRANT the application of Prairie Air, Inc. (File No. BNPED-20100226AIY) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

140. **NCE Reserved Allotment Group 23.** Accordingly, IT IS ORDERED, That Northwestern Illinois Radio Fellowship is TENTATIVELY SELECTED to be awarded a construction

permit for a new NCE FM station in Freeport, Illinois, and its application is ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Grace Public Radio (File No. BNPED-20100222ADJ), Community Broadcasting, Inc. (File No. BNPED-20100226ABV), Aquin Central Catholic High School (File No. BNPED-20100226ACF), Calvary Radio Network, Inc. (File No. BNPED-20100226AEL), Christian Radio Network (File No. BNPED-20100226AIR), Rockford Urban Ministries (File No. BNPED-20100226AIT), and Shannon Baptist Church (File No. BNPED-20100226AIU), and TO GRANT the application of Northwestern Illinois Radio Fellowship (File No. BNPED-20100226AAD) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

141. **NCE Reserved Allotment Group 24.** Accordingly, IT IS ORDERED, That Pinckneyville Community Radio is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Pinckneyville, Illinois, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, 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 Heterodyne Broadcasting Company (File No. BNPED-20100226AJF) and TO GRANT the application of Pinckneyville Community Radio (File No. BNPED-20100226AIB) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

142. **NCE Reserved Allotment Group 25.** Accordingly, IT IS ORDERED, That The Gabriel Project, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Columbus, Indiana, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, 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 Moody Bible Institute of Chicago (File No. BNPED-20100226ACS), Christian Radio Friends, Inc. (File No. BNPED-20100226ACX), Triangle Foundation, Inc. (File No. BNPED-20100226AEH), Good Shepherd Radio, Inc. (File No. BNPED-20100226AES), The Trustees of Indiana University (File No. BNPED-20100226AET), and Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AGZ), and TO GRANT the application of The Gabriel Project, Inc. (File No. BNPED-20100226AFV) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

143. **NCE Reserved Allotment Group 26.** Accordingly, IT IS ORDERED, That Community Broadcasting, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Farmersburg, Indiana, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, 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 Hope Broadcasting, Inc. (File No. BNPED-20100224AAA), Hispanic Family Christian Network, Inc.

(File No. BNPED-20100226AGY), and Serendipity Educational Broadcasting, Inc. (File No. BNPED-20100226AHC), and TO GRANT the application of Community Broadcasting, Inc. (File No. BNPED-20100226AAG) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

144. **NCE Reserved Allotment Group 27.** Accordingly, IT IS ORDERED, That Harvest Chapel Attica, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Fowler, Indiana, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Educational Broadband Corp. (File No. BNPED-20100226ABR) and TO GRANT the application of Harvest Chapel Attica, Inc. (File No. BNPED-20100226AAI) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

145. **NCE Reserved Allotment Group 28.** Accordingly, IT IS ORDERED, That Cornerstone Community Fellowship is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Madison, Indiana, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, 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 Good Samaritan Educational Radio, Inc. (File No. BNPED-20100226AAW) and Triangle Foundation, Inc. (File No. BNPED-20100226AJS) and TO GRANT the application of Cornerstone Community Fellowship (File No. BNPED-20100226ABY) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

146. **NCE Reserved Allotment Group 29.** Accordingly, IT IS ORDERED, That Terre Haute Seventh-Day Adventist Church, The Light House Mission Ministries, Inc., and Terre Haute Bible Baptist Church, Inc. are TENTATIVELY SELECTED to be awarded construction permits ON A TIMESHARING BASIS for new NCE FM stations in Terre Haute, Indiana. The three applications ARE ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentatively selected applications, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Indiana State University Board of Trustees (File No. BNPED-20100219AAQ), Illinois Bible Institute, Inc. (File No. BNPED-20100225ABO), The Trustees of Indiana University (File No. BNPED-20100225ACG), Grace Public Radio (File No. BNPED-20100225ACP), Indiana Educational Broadcast Corp. (File No. BNPED-20100226AAX), Word Power, Inc. (File No. BNPED-20100226ADM), Community Broadcasting, Inc. (File No. BNPED-20100226AGC), Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AHK), and Prairie Air, Inc. (File No. BNPED-20100226AIX). We further direct the staff to provide the tentatively selected applicants 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 Terre Haute Seventh-Day Adventist Church (File No. BNPED-20100224AAE), The Light House Mission Ministries, Inc. (File No. BNPED-20100224AAF), and Terre Haute Bible Baptist Church, Inc. (File No. BNPED-20100224AAV)

CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service. If the applicants are unable to reach a voluntary timesharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate timesharing arrangement.

147. **NCE Reserved Allotment Group 30.** Accordingly, IT IS ORDERED, That Hutchinson Community College is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Council Grove, Kansas, 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 Alleycat Communications (File No. BNPED-20100225ADW), Community Broadcasting, Inc. (File No. BNPED-20100226ABU), Gospel American Network (File No. BNPED-20100226ADF), Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AHX), and UFM Community Learning Center (File No. BNPED-20100226AIF), and TO GRANT the application of Hutchinson Community College (File No. BNPED-20100225AAS) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

148. **NCE Reserved Allotment Group 31.** Accordingly, IT IS ORDERED, That Music Ministries, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Smith Mills, Kentucky, and that its application is ACCEPTED FOR FILING establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Bohica (File No. BNPED-20100222ABX) and Saint Ann Radio Group, Inc. (File No. BNPED-20100225AAC), and TO GRANT the application of Music Ministries, Inc. (File No. BNPED-20100226ACZ) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

149. **NCE Reserved Allotment Group 32.** Accordingly, IT IS ORDERED, That Congregation of our Lady of Prompt Succor Catholic Church, Golden Meadow, Louisiana is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Golden Meadow, Louisiana, and that its application is ACCEPTED FOR FILING establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Providence Educational Foundation, Inc. (File No. BNPED-20100225ABN) and Hispanic Family Christian Network, Inc. (File No. BNPED-20100226AHJ), and TO GRANT the application of Congregation of our Lady of Prompt Succor Catholic Church, Golden Meadow, Louisiana (File No. BNPED-20100226ACG) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

150. **NCE Reserved Allotment Group 34.** Accordingly, IT IS ORDERED, That The First Baptist Church of Castor is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Ringgold, Louisiana, and that its application is ACCEPTED FOR FILING establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Family Life Educational Foundation (File No. BNPED-20100226AGJ), Tri-City Baptist Church (File No. BNPED-20100226AHV), and Smile FM (File No. BNPED-20100226AIS), and TO GRANT the application of First Baptist Church of Castor (File No. BNPED-20100226AAC) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and Section 73.202(a)(1)(ii) of the Commission's Rules, 47 C.F.R. § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

151. **NCE MX Group 328.** Accordingly, IT IS ORDERED, That the August 10, 2010, informal objection, filed by Help Save the Apalachicola River Group, Inc., IS GRANTED to the extent discussed herein, and the application of Martin Bayou Management Corporation for a new NCE FM station in Mexico Beach, Florida (File No. BNPED-20071022BQK) IS DISMISSED. IT IS FURTHER ORDERED, That the July 28, 2010, Petition to Deny, filed by Martin Bayou Management Corporation, IS DISMISSED AS MOOT, and the application of Help Save the Apalachicola River Group Inc. for a new NCE FM station in Port St. Joe, Florida (File No. BNPED-20071018AQD) IS GRANTED, conditioned upon that applicant'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.

152. **NCE MX Group 389.** Accordingly, IT IS ORDERED, That the tentative selection of the application of Available Media, Inc. for a new NCE FM station in Tohajiilee Indian Reservation, New Mexico (File No. BNPED-20071018BAR) IS RESCINDED. IT IS FURTHER ORDERED, That the July 28, 2010, Petition to Deny, filed by the Board of Regents of New Mexico Highlands University, IS GRANTED to the extent indicated herein. IT IS FURTHER ORDERED, That Board of Regents of New Mexico Highlands University is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Milan, New Mexico, and that its application is ACCEPTED FOR FILING establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application Available Media, Inc. (File No. BNPED-20071018BAR), and TO GRANT the application of Board of Regents of New Mexico Highlands University (File No. BNPED-20071022BPX) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the 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.

153. **NCE MX Group 393.** Accordingly, IT IS ORDERED, That the tentative selection of the application of Mission Connecticut, Inc. for a new NCE FM station in Brewster, New York (File No. BNPED-20071015AEN) IS RESCINDED. IT IS FURTHER ORDERED, That the July 27, 2010, Petition to Deny, filed by WAMC, IS GRANTED to the extent indicated herein. IT IS FURTHER ORDERED, That WAMC is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Brewster, New York, and that its application is ACCEPTED FOR FILING establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to

deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Mission Connecticut, Inc. (File No. BNPED-20071015AEN) and TO GRANT the application of WAMC (File No. BNPED-20071019APS) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the 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.

154. **NCE MX Group 394.** Accordingly, IT IS ORDERED, That the tentative selection of the application of Long Island ACORN for a new NCE FM station in Riverhead, New York (File No. BNPED-20071019AVG) IS RESCINDED. IT IS FURTHER ORDERED, That the July 28, 2010, Petition to Deny, filed by Community Bible Church, Inc., IS GRANTED to the extent indicated herein. IT IS FURTHER ORDERED, That Community Bible Church, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station at Quogue, New York, and that its application is ACCEPTED FOR FILING establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Long Island ACORN (File No. BNPED-20071019AVG) and TO GRANT the application of Community Bible Church, Inc. (File No. BNPED-20071015AHH) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the 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.

155. **NCE MX Group 417.** Accordingly, IT IS ORDERED, That the tentative selection of the applications of Rapid City Columbian Club, Inc. and Three Angels Seventh Day Adventist Church for new NCE FM stations in Box Elder and Rapid City, South Dakota, ARE RESCINDED. IT IS FURTHER ORDERED, That the September 2, 2010, Petition to Deny, filed by the South Dakota School of Mines and Technology, IS GRANTED to the extent indicated herein. IT IS FURTHER ORDERED, That the Motion to Dismiss the Application of Three Angels Seventh Day Adventist Church for a new NCE FM station in Rapid City, South Dakota, IS GRANTED, and the application (File No. BNPED-20071022BCG), IS DISMISSED. IT IS FURTHER ORDERED, That that the Petitions to Deny, filed by the South Dakota School of Mines and Technology and Rapid City Columbian Club, Inc., against the application of Three Angels Seventh Day Adventist Church, ARE DISMISSED AS MOOT. IT IS FURTHER ORDERED, That the application of Rapid City Columbian Club, Inc. for a new NCE FM station in Box Elder, South Dakota (BNPED-20071022BVA) IS DISMISSED, and the application, filed by South Dakota School of Mines and Technology, for a new NCE FM station in Rapid City, South Dakota (File No. BNPED-20071018AML) IS GRANTED CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX

## NCE Reserved FM Allotment Groups

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

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

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

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

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

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