

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

In the Matter of)
Comparative Consideration of Five Groups of)
Mutually Exclusive Applications) FM Translator MX Group Numbers 004,
for Permits to Construct New Noncommercial) 018, 024, 028, and 038
Educational Reserved Band FM Translator)
Stations)

MEMORANDUM OPINION AND ORDER

Adopted: July 11, 2014

Released: July 15, 2014

By the Commission:

I. INTRODUCTION

1. By this Memorandum Opinion and Order ("Order"), the Commission considers five closed groups of mutually exclusive applications for new noncommercial educational ("NCE") reserved band FM translator station construction permits. The Commission resolves such conflicting NCE proposals by applying comparative procedures codified in Part 73, Subpart K, of the Commission's Rules (the "Rules"). 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.

II. BACKGROUND

2. The applications addressed in this Order were filed at a time when the Commission used formal comparative evidentiary hearings to resolve conflicts among mutually exclusive NCE applications. The Commission subsequently adopted an NCE point system, which is a simplified, "paper hearing" process for selecting among such NCE applications. Accordingly, applicants in closed,

1 Channels 201-220 are reserved for noncommercial educational FM broadcasting. See 47 C.F.R. § 73.501; see also 47 C.F.R. § 74.1201(c) (defining a "noncommercial FM translator" as an FM broadcast translator station which rebroadcasts the signals of a noncommercial educational AM or FM radio broadcast station).

2 47 C.F.R. §§ 73.7000 – 73.7005.

3 See id. § 73.7004(b).

4 The applications addressed herein and their respective file numbers are listed in the Appendix.

5 Under former licensing procedures, an application for a new station or for a major modification of an existing station could be filed at any time. An acceptable application was placed on an "A" cut-off notice, which announced the deadline for the filing of mutually exclusive applications to the "lead" application. After this deadline the lead application was "cut-off," i.e., protected from subsequently filed and conflicting proposals.

6 See 47 C.F.R § 73.7003 (point system selection procedures).

7 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) ("Further Notice"), 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), aff'd sub nom. American

cut-off groups of NCE reserved band FM translator applications⁸ were required to file NCE comparative information on FCC Forms 349⁹ or 349-Supp,¹⁰ by July 19, 2001.¹¹ Applicants reported their maximum non-technical point qualifications as of June 4, 2001, which is also known as the “snapshot” date.¹² Any changes made after the snapshot date could potentially reduce, but could not increase, an applicant’s points.

3. Several judicial challenges delayed implementation of the new point system procedures.¹³ Applicants, however, were required to keep their pending applications up to date by reporting any changes that would decrease their points.¹⁴ Section III of this Order provides an overview of each comparative criterion. Section IV is a narrative of the number of points that have been awarded in each of the five mutually exclusive groups.

III. POINT SYSTEM SELECTION PROCESS

4. **Four Distinct Point Criteria.** The Commission compares mutually exclusive groups of NCE reserved band FM translator applications under the point system set forth in Section 73.7003 of the Rules.¹⁵ The NCE point system awards a maximum of seven merit points, based on four distinct criteria.¹⁶

a. Established Local Applicant. First, three points are awarded to applicants that certify that they have been local and established for at least two years immediately prior to the filing of their application. 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

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Family Ass’n v. FCC, 365 F.3d 1156 (D.C. Cir. 2004), *cert. denied*, 543 U.S. 1000 (2004) (history pertaining only to non-reserved band FM channels omitted).

⁸ Closed, cut-off groups are not subject to additional competing applications.

⁹ FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station.

¹⁰ In 2001, the Commission released an abridged Form 349, the 349-Supp, which contained only the form instructions and sections needed to claim points. The Form 349-Supp is now obsolete.

¹¹ Applicants also had the option of filing settlements or technical amendments to resolve all mutual exclusivities. See *Deadline for NCE Settlements and Supplements Extended to July 19, 2001*, Public Notice, 16 FCC Rcd 10892 (MB 2001) (“*Supplement Extension Notice*”). On channels reserved for NCE use, the Commission grants the application of a translator providing fill-in service over one that extends the area of the primary station. In the event of conflicting mutually exclusive applications of the same type (fill-in or non-fill-in), the Commission applies the point system to select one application for grant.

¹² See *Supplements and Settlements to Pending Closed Groups of Noncommercial Educational Applicants Due by June 4, 2001*, Public Notice, 16 FCC Rcd 6893 (MB 2001) (“*Supplement Filing Notice*”); *Supplement Extension Notice*, Public Notice, 16 FCC Rcd at 10892. All points are considered as of the June 4, 2001, snapshot date except for best technical proposal, which is calculated as of the earlier of the closed group’s cut-off date or April 21, 2000. See *NCE MO&O*, 16 FCC Rcd at 5086.

¹³ See *supra* note 7.

¹⁴ See 47 C.F.R. § 1.65; *Section 1.65 Amendment Deadline Established for Noncommercial Educational FM and FM Translator Station Applicants*, Public Notice, 19 FCC Rcd 24740 (MB 2004).

¹⁵ See 47 C.F.R. § 73.7003.

¹⁶ See 47 C.F.R. § 73.7003(b).

its certification in a local public inspection file, and that it has submitted that documentation to the Commission.¹⁷

b. Diversity of Ownership. Second, two points are awarded for local diversity of ownership if the principal community contours of the applicant's proposed station do not overlap with those of any other station in which any party to the application holds an attributable interest.¹⁸ This criterion is intended to foster broadcast diversity by improving the likelihood that the public will be served by new and different NCE licensees.¹⁹ To be awarded such points, an applicant's governing documents must include a provision requiring that such diversity of ownership be maintained 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 supporting any diversity points claimed by the applicant will be maintained.²⁰ 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.²¹

c. State-wide Network. 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.²²

d. Technical Parameters. Fourth, an applicant that proposes the best technical proposal in the group (*i.e.*, proposes service to the largest population and area, excluding substantial areas of water) may receive up to two points. The applicant receives one point if its proposed service area *and* population are ten percent greater than those of the next best area and population proposals, or two points if both are 25 percent greater than those of the next best area and population proposals, as measured by each proposed station's predicted 60 dBu signal strength contour.²³ If the best technical proposal does not

¹⁷ See FCC Form 349 at 13 (requiring governing documents to ensure that applicant maintain "local" characteristics of governing board); FCC Form 349, Worksheet 3 (same); *NCE Order*, 15 FCC Rcd at 7419.

¹⁸ 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.*

¹⁹ See, e.g., *Further Notice*, 13 FCC Rcd at 21177; *NCE Order*, 15 FCC Rcd at 7399.

²⁰ See *NCE MO&O*, 16 FCC Rcd at 5095.

²¹ As noted, Section 73.7003(b)(2) of the Commission's Rules explicitly states that an applicant awarded points for diversity of ownership must have governing documents requiring that such diversity be maintained. 47 C.F.R. § 73.7003(b)(2). The FCC Form 349 clearly requires an applicant to submit documentation of its diversity qualifications to the Commission. See FCC Form 349, Section IV, Question 2. Despite this directive, several applicants herein failed to adequately support their diversity claims. See FM Translator Groups 004, 018, and 038. Similarly, several applicants filing during the October 2007, NCE FM filing window neglected to provide the requisite documentation to support their diversity claims. See, e.g., *Comparative Consideration of 59 Groups of Mutually Exclusive Applications*, Memorandum Opinion and Order, 25 FCC Rcd 1681, 1690, 1693, 1695 (2010). We note, however, that the vast majority of such NCE FM and FM translator applications subject to our point system analysis have been resolved. Accordingly, we are optimistic that this lack of documentation will no longer be a recurring issue.

²² See 47 C.F.R. § 73.7003(b)(3). The statewide network credit is an alternative for applicants that use multiple stations to serve large numbers of schools and, therefore, do not qualify for the local diversity of ownership credit.

²³ *Id.* § 73.7003(b)(4). See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications to Construct New or Modified NCE FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101, 6121-22

(continued....)

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.

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

6. **Tie-Breakers.** 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.²⁴ The first tie-breaker for NCE FM translator applicants is the number of radio station authorizations attributable to each applicant.²⁵ 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 pending radio station applications attributable to each applicant. Applicants are required to include new and major change radio applications, including their FM translator application at issue in this proceeding. If that second factor fails to break the tie, we select the first applicant to file.

7. **Timely Documentation of Comparative Qualifications.** The FCC Form 349 is certification-based, but requires applicants to document their claims by submitting supporting information both to the Commission and to a local public file.²⁶ The basis for 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, are not 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 the documentation."²⁷ While there is some flexibility in the type of documentation an applicant may provide, an applicant submitting no timely documentation at all cannot be found to have made a valid certification. We have adjusted the points of such applicants downward.

IV. POINT SYSTEM DETERMINATIONS

8. This Section contains narrative descriptions of our point system analyses in each mutually exclusive reserved band NCE FM translator proceeding, organized chronologically by assigned group number. Unless otherwise noted, each component of the analysis is based on applicant-provided

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("NCE Omnibus") (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).

²⁴ 47 C.F.R. § 73.7003(c).

²⁵ *Id.* § 73.7003(c)(1). Applicants are required to count all attributable full service commercial and NCE radio stations and certain FM translator stations providing non-fill-in service.

²⁶ See *NCE Order*, 15 FCC Rcd at 7423.

²⁷ See *FCC Form 349*, Instructions, Section IV, Question 2. With respect to documenting current diversity, the preferred supporting information documentation is a map showing no overlap or a statement that none of the parties to the application holds an attributable interest in any other station. To document future diversity, the applicant would generally submit a copy of the governing documents referenced in the certification.

information.²⁸ We have provided readers with an Appendix that condenses the group-by-group narratives that follow into chart form for quick reference. These groups are being considered for the first time.

9. **FM Translator Group 004.** This group is comprised of the applications of Educational Media Foundation (“EMF”) and Community Broadcasting, Inc. (“CBI”) for an FM translator station at St. Joseph, Missouri. Neither applicant claims to be eligible for points as an established local applicant or a statewide network. EMF claims two points for diversity of ownership; CBI does not. EMF, however, fails to adequately support its claim for diversity points, and therefore does not qualify for points under this criterion.²⁹ With respect to technical parameters, EMF claims that its proposed 60 dBu contour would encompass 383 square kilometers with a population of 81,511. CBI claims that its proposed 60 dBu contour would encompass 440 square kilometers with a population of 79,663. Neither applicant is eligible for points under the best technical proposal criterion because neither will serve at least 10 percent more area and population than the other. Accordingly, EMF and CBI are each credited with zero points, and we proceed to the tie-breaker. Under the first tie-breaker criterion, EMF certifies that it has an attributable interest in 538 radio authorizations. CBI certifies that it has attributable interests in 20 radio authorizations. CBI therefore prevails on the first tie-breaker and is the tentative selectee in Group 004.

10. **FM Translator Group 018.** This group consists of the applications of Living Way Ministries, Inc. (“LWM”) for an FM translator station at Weehawken, New Jersey, and Pensacola Christian College, Inc. (“PCC”) for an FM translator station at Union City, New Jersey. Neither applicant claims to be eligible for points as an established local applicant or a statewide network. LWM and PCC each claim two points for diversity of ownership. LWM and PCC, however, each failed to provide the requisite documentation to support their respective diversity claims, and, accordingly, neither will receive points under this criterion.³⁰ With respect to technical parameters, LWM claims that its proposed 60 dBu contour would encompass 425 square kilometers with a population of 4,106,512. PCC claims that its proposed 60 dBu contour would encompass 402 square kilometers and 3,999,596 people. Neither applicant is eligible for points under the best technical proposal criterion because LWM’s proposal to serve the largest area and population does not exceed PCC’s next best proposal by at least 10 percent. Accordingly, LWM and PCC are each credited with zero points, and we proceed to the first tie-breaker criterion. LWM certifies that it has an attributable interest in 18 radio authorizations. PCC certifies that it has attributable interests in 96 radio authorizations. LWM therefore prevails on the first tie-breaker and is the tentative selectee in Group 018.

11. **FM Translator Group 024.** This group consists of two applications for FM translator stations at Narberth, Pennsylvania. The applicants are World Revivals, Inc. (“WRI”) and Calvary Chapel of Twin Falls, Inc. (“CCTF”). Neither applicant claims to be eligible for points as an established local applicant or a statewide network. WRI and CCTF each claim two points for diversity of ownership. WRI and CCTF, however, fail to submit any supporting documentation for their respective diversity claims, and, accordingly, neither will receive points under this criterion. With respect to technical parameters,

²⁸ Specifically, claims to qualify as established local applicants, for diversity of ownership, and as statewide networks were reported in the responses to Section IV, Questions 1-3, respectively. Applicants reported the area and population figures used in our analyses of technical parameters in responses to Section IV, Question 4. Tie-breaker information concerning the applicants’ attributable interests in other radio station authorizations and other radio station applications were reported in responses to Section IV, Questions 5 and 6, respectively.

²⁹ EMF submitted an exhibit stating that the “principal community contour of the station proposed does not overlap the principal community contour of any station attributable to EMF.” EMF, however, provides no indication that it timely adopted governing documents to maintain diversity in the future.

³⁰ LWM included a statement from its Executive Vice President certifying that “in each case in which a construction permit for a new NCE FM station is granted to us based on points for diversity, we will fully comply with the provisions of Item 2, Section IV of the Form 340 supplement.” LWM, however, neglected to show that its governing documents require that such diversity be maintained. PCC submitted no documentation to support its diversity claim.

WRI claims that its proposed 60 dBu contour would encompass 99 square kilometers with a population of 191,800. CCTF claims that its proposed 60 dBu contour would encompass 108 square kilometers and 180,918 people. Neither applicant is eligible for any points under the best technical proposal criterion because neither will serve at least 10 percent more area and population than the other. Accordingly, WRI and CCTF are each credited with zero points, and we proceed to a tie-breaker. Under the first tie-breaker criterion, WRI certifies that it has attributable interests in 17 radio authorizations while CCTF certifies it has an attributable interest in 572 radio authorizations. WRI therefore prevails on the first tie-breaker and is the tentative selectee in Group 024.

12. **FM Translator Group 028.** This group is comprised of the applications of (1) The Moody Bible Institute of Chicago (“MBIC”) for an FM translator station at Tampa, Florida; (2) Radio Training Network, Inc. (“RTN”) for an FM translator station at Oldsmar, Florida; and (3) Faith Pleases God Church Corporation (“FPGC”) for an FM translator station at Clearwater, Florida. None of the applicants claims points as an established local applicant or a statewide network. RTN claims two points for diversity of ownership; MBIC does not. FPGC did not claim points for diversity of ownership in its original point supplement, filed in July 2001. Rather, almost a year after the close of the supplement filing window, FPGC amended its application to claim diversity of ownership points.³¹ FPGC's post-filing window amendment is a prohibited attempt to enhance its comparative position and will not be considered.³² Accordingly, and based upon our review of RTN's showing, which we find to be sufficient, we award diversity of ownership points only to RTN. With respect to technical parameters, MBIC claims that its proposed 60 dBu contour would encompass 157 square kilometers with a population of 152,249; RTN, 121 square kilometers and 91,398 people; and FPGC, 126 square kilometers and 161,594 people. No applicant is eligible for any points under the best technical proposal criterion because none will serve at least 10 percent more area and population than the next best proposal. Accordingly, RTN is credited with a total of two points; MBIC and FPGC are each credited with zero points. RTN is therefore the tentative selectee in Group 028.

13. **FM Translator Group 038.** This group is comprised of two applications for FM translator stations at Gainesville, Georgia. The applicants are Living Way Ministries, Inc. (“LWM”) and Community Public Radio, Inc. (“CPR”). Neither applicant claims points as an established local applicant or a statewide network. LWM claims two points for diversity of ownership; CPR does not. LWM, however, fails to provide the requisite documentation to support its diversity claim, and, therefore, will not receive points under this criterion.³³ With respect to technical parameters, LWM claims that its proposed 60 dBu contour would encompass 132 square kilometers with a population of 44,761. CPR claims that its proposed 60 dBu contour would encompass 101 square kilometers and 39,317 people. LWM is eligible for one point under the best technical proposal criterion because it will serve at least 10 percent more area and population than CPR's proposal. Accordingly, LWM is credited with a total of one point; CPR is credited with zero points. LWM is therefore the tentative selectee in Group 038.

³¹ See amendment to File No. BNPFT-20000302ABP, filed May 21, 2002.

³² The Commission has repeatedly disallowed the enhancement of qualifications in NCE comparative cases, consistent with 47 C.F.R. § 73.7003(f), and the Commission's historical concern that the late submission of requested information 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); *see also LRB Broadcasting*, Memorandum Opinion and Order, 8 FCC Rcd 3076 (1993); *NCE MO&O*, 16 FCC Rcd at 5085-86. Moreover, we note that FPGC also failed to submit any documentation to support its diversity claim.

³³ LWM included a statement from its Executive Vice President certifying that “in each case in which a construction permit for a new NCE FM station is granted to us based on points for diversity, we will fully comply with the provisions of Item 2, Section IV of the Form 340 supplement.” LWM, however, neglected to show that its governing documents require that such diversity be maintained.

V. NEXT STEPS

14. **Acceptability Studies and Filing of Petitions.** The staff has examined the applications of each **tentative** selectee for application defects.³⁴ Each tentative selectee identified in this Order and its Appendix appears to be fully qualified to become the licensee of the new FM translator station it has proposed. We tentatively conclude that the grant of these applications would serve the public interest, convenience and necessity. Accordingly, the applications of the tentative selectees are accepted for filing. This triggers a 30-day period for the filing of petitions to deny, commencing with the release of this Order.

15. Any argument that the tentatively selected application should not be granted must be raised in such a petition, even if the objection relates only indirectly to the tentative selectee's comparative points awarded herein. 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 should make its argument in a petition to deny. Parties may 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.³⁵ Any such petition to deny must contain allegations of fact supported by an affidavit of a person or persons with personal knowledge thereof.³⁶ Responsive pleadings, if any, should be submitted as provided for in Section 73.7004(c) of the Rules.³⁷

16. **Forthcoming Staff Action.** We direct the staff, once the petition to deny period has run, to conduct a final study of each tentatively selected application in accordance with the Bureau's 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.

17. With the exception of issues that are new or novel or require Commission or Administrative Law Judge consideration by statute or rules, 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.³⁸ The staff need not refer such matters to the Commission or designate such matters for hearing before an Administrative Law Judge unless the issues are new or novel, or raise a substantial and material question of fact 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 there is a new or novel issue.³⁹ In such cases, the staff would refer the mutually exclusive group to the Commission for resolution of the new or novel issue and/or the

³⁴ 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).

³⁵ See *id.* § 1.106 (a) (1). See also *Patrick J. Vaughn, Esq.*, Letter, 22 FCC Rcd 11165 (MB 2007).

³⁶ See 47 C.F.R. § 73.7004(b).

³⁷ See 47 C.F.R. § 73.7004(c).

³⁸ 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).

³⁹ See generally *NCE Omnibus*, 22 FCC Rcd at 6162 n.230 (2007) (standards for staff evaluation of petitions).

determination of a successor tentative selectee. In cases where there is a substantial and material question of fact, the staff should designate the issue for hearing before an Administrative Law Judge.

18. **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 discussed herein.

VI. ORDERING CLAUSES

19. 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.⁴⁰ 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.

20. **FM Translator Group 004.** Accordingly, IT IS ORDERED, that Community Broadcasting, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM translator station in St. Joseph, Missouri, and its application (File No. BPFT-19980219TA) IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Educational Media Foundation (File No. BPFT-19970911TH) and TO GRANT the application of Community Broadcasting, Inc. 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.

21. **FM Translator Group 018.** Accordingly, IT IS ORDERED, that Living Way Ministries, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM translator station in Weehawken, New Jersey, and its application (File No. BPFT-19990809TB) IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Pensacola Christian College, Inc. (File No. BNPFT-19991130AAO) and TO GRANT the application of Living Way Ministries, Inc. 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.

22. **FM Translator Group 024.** Accordingly, IT IS ORDERED, that World Revivals, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM translator station in Narberth, Pennsylvania, and its application (File No. BNPFT-19990921AAJ) IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order for the filing of petitions to deny solely for the purpose of objecting to any issues pertaining to the point analysis

⁴⁰ 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).

herein.⁴¹ 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 Calvary Chapel of Twin Falls, Inc. (File No. BNPFT-20000118AEF) and TO GRANT the application of World Revivals, Inc. 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.

23. **FM Translator Group 028.** Accordingly, IT IS ORDERED, that Radio Training Network, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new FM translator station in Oldsmar, Florida, and its application (File No. BNPFT-19991020AAG) IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentatively selected application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of The Moody Bible Institute of Chicago (File No. BNPFT-19991020AAF) and Faith Pleases God Church Corporation (File No. BNPFT-20000302ABP) and TO GRANT the application of Radio Training Network, Inc. CONDITIONED UPON the 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.

24. **FM Translator Group 038.** Accordingly, IT IS ORDERED, that Living Way Ministries, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new FM translator station in Gainesville, Georgia, and its application (File No. BNPFT-20000516AAG) IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days from the date of release of this Order for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentatively selected application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Community Public Radio, Inc. (File No. BNPFT-19991228ABE) and TO GRANT the application of Living Way Ministries, Inc. CONDITIONED UPON the selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴¹ This application (File No. BNPFT-19990921AAJ) was previously placed on a general "Accepted for Filing" Public Notice. See Broadcast Applications, Public Notice, Report No. 26821 (Sept. 15, 2008).