

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

In the Matter of	)	
	)	
Comparative Consideration of 3 Groups of	)	<b>NCE Reserved Allotment Group Numbers</b>
Mutually Exclusive Applications for Permits	)	<b>7, 39, and 48</b>
to Construct New Noncommercial Educational	)	
FM Stations	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 13, 2016**

**Released: July 14, 2016**

By the Commission:

**I. INTRODUCTION**

1. By this Memorandum Opinion and Order, the Commission considers petitions for reconsideration in three separate proceedings for permits to construct new noncommercial educational (NCE) FM stations, respectively designated as Reserved Allotment Groups 7, 39, and 48.<sup>1</sup> In each proceeding, the Commission used a point system to compare applications, tentatively determined that there was a tie for the most points, and proposed to grant the tied applications on a time-sharing basis.<sup>2</sup> In Groups 39 and 48, the Commission subsequently dismissed one application from each group upon determining, following receipt of petitions, that the applicants did not qualify for points originally claimed.<sup>3</sup> The dismissed applicants seek reconsideration, which we deny for the reasons discussed below.<sup>4</sup> In Group 7, we reverse a Media Bureau (Bureau) decision it refers to us in which it reached a different conclusion on a similar point-related issue.<sup>5</sup>

<sup>1</sup> The applicants in Groups 7, 39, and 48 sought, respectively, to construct new stations at Sutter Hill, California; Bozeman, Montana; and Dallas, Oregon. See *Michael Couzens, Esq.*, Letter Order, 27 FCC Rcd 11218 (MB 2012) (*Sutter Hill Letter*) (Group 7) and *Comparative Consideration of 7 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 30 FCC Rcd 5135 (2015) (*Seven Group Comparative Order*) (Groups 39 and 48). The file numbers of the applications under consideration here are BNPED-20100225ADX (Group 7), BNPED-20100226AGK (Group 39), and BNPED-20100223AAB (Group 48).

<sup>2</sup> See 47 CFR § 73.7003. See also Report and Order, 15 FCC Rcd 7386 (2000) (*NCE Order*), vacated in part on other grounds sub nom. *National Pub. Radio v. FCC*, 254 F.3d 226 (D.C. Cir. 2001), clarified, Memorandum Opinion and Order, 16 FCC Rcd 5074 (*NCE MO&O*) (subsequent history omitted).

<sup>3</sup> See *Seven Group Comparative Order*, 30 FCC Rcd at 5157-58, paras. 65, 67.

<sup>4</sup> Reconsideration is appropriate if the petitioner shows a material error or omission in the original order or raises additional facts not previously known. See *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), cert. denied, 383 U.S. 967 (1966); 47 CFR § 1.106.

<sup>5</sup> *Sutter Hill Letter*, 27 FCC Rcd at 11224-26. The petition for reconsideration of the *Sutter Hill Letter* seeks reconsideration of an interlocutory action, which is prohibited under our rules. See 47 CFR § 1.106(a)(1). An interlocutory action is an interim determination on a matter involving an application; it does not grant or deny the application. The Bureau took no final action with regard to any of the Group 7 applications. We treat the filing as an informal request.

## II. BACKGROUND

2. At issue is whether each of the challenged applicants qualifies for two points for “diversity of ownership.” Diversity exists if the principal community contour of a proposed NCE FM station does not overlap with that of another radio station in which either the applicant or any party to the application holds an attributable interest.<sup>6</sup> To qualify for diversity points, an applicant must certify that: (1) it currently has no such interests; (2) the organization’s governing documents, *i.e.*, its “by-laws, constitution, or their equivalent,” require maintenance of diversity into the future (the Governing Document Requirement);<sup>7</sup> and (3) it has submitted documentation to the Commission. Prior to the instant proceedings, the Commission made a limited exception to the Governing Document Requirement only for public entities whose charters could not be timely amended absent legislation.<sup>8</sup> The Commission allowed such entities to demonstrate diversity through alternative safeguards (the Legislative Exception).<sup>9</sup>

3. In each of the instant proceedings, the Commission tentatively accepted diversity certifications without independent verification, in accordance with standard practice, and invited petitions.<sup>10</sup> In Group 7, Farms of Amador (Farms) filed a petition challenging the diversity claim of Sutter Hill Seventh-day Adventist Church (SHSDA).<sup>11</sup> In Group 39, Gallatin Valley Community Radio (GVCR) filed a petition challenging the diversity claim of Montana Conference of Seventh-day Adventists, Inc. d/b/a Mount Ellis Academy (MEA). In Group 48, Mano a Mano Family Center (Mano) filed a petition challenging the diversity claim of Dallas Seventh-day Adventist Church (DSDA).<sup>12</sup> The Bureau (Group 7) and Commission (Groups 39 and 48) then examined the challenged diversity showings in greater depth.<sup>13</sup> None of the challenged applicants claimed to satisfy the Governing Document Requirement or to qualify for the Legislative Exception. Each stated that its affiliation with the Seventh-day Adventist (SDA) Church prevented it from having and/or timely amending governing documents, and provided language of an alternative diversity policy of its church board without any document embodying

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<sup>6</sup> See 47 CFR § 73.7003(b)(2). Diversity is desirable because it enables listeners to receive different viewpoints. See *NCE MO&O*, 16 FCC Rcd at 5095, para. 55.

<sup>7</sup> 47 CFR § 73.7003(b)(2). The Commission has accepted, as “equivalent” documents, verifiable resolutions by organization leadership. See, e.g., *Comparative Consideration of 59 Groups of Mutually Exclusive Applications to Construct Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 25 FCC Rcd 1681, 1691, 1695, paras. 35, 52 (2010). It is not clear in the instant proceedings that the applicants would have been unable to submit an “equivalent” document, but we need not resolve that question in view of our conclusion that their alternative submissions were inadequate.

<sup>8</sup> See *NCE MO&O*, 16 FCC Rcd at 5095, para. 58.

<sup>9</sup> *Id.* at 5094-95, paras. 57-58. Cf. *Talking Info. Ctr.*, Letter Order, 22 FCC Rcd 11120, 11121-22 (MB 2007) (*Talking Info. Ctr.*), modified on other grounds, *Seven Group Comparative Order*, 30 FCC Rcd at 5168-69, paras. 50-53 (successful point claim under the Legislative Exception).

<sup>10</sup> This practice is designed to expedite licensing, and provides for potential verification prior to grant through the petition to deny process and random audits. See *NCE MO&O*, 16 FCC Rcd at 5104, para. 88.

<sup>11</sup> Farms and SHSDA were among four tied tentative selectees in Group 7. The other two were Calvary Chapel of Amador County and Sonora Sierra Heritage Foundation.

<sup>12</sup> Mano and DSDA were among four tied tentative selectees in Group 48. The other two were Calvary Chapel of McMinnville, Inc. and Capital Community Television, Inc. Calvary Chapel of McMinnville, Inc. is the licensee of low power FM station KKJC-LP, McMinnville, Oregon. It qualified for a diversity point due to its timely divestiture commitment pursuant to the waiver policy referenced in its application. See FCC File No. BNPED-20100222ACK, Exh. 14.

<sup>13</sup> The Group 7 and Group 48 challenges were properly filed in respective petitions to deny. The Group 39 challenge was part of an improperly-filed petition for reconsideration of an interlocutory action. The Commission dismissed the Group 39 petition but considered the Group 39 diversity claim on its own motion. See *Seven Group Comparative Order*, 30 FCC Rcd at 5147, para. 33.

the policy or details of its adoption.<sup>14</sup> In Group 7, the Bureau accepted the applicant's alternative showing because the Bureau believed that the claimed policy existed in a physical format from which the applicant had electronically "copied and pasted" language into the application.<sup>15</sup> In contrast, the Commission rejected the alternate showing in Groups 39 and 48. The Commission stated that it would be willing to consider alternative diversity safeguards from applicants without traditional governing documents in the "rare circumstance" where governing boards meet only once every four years,<sup>16</sup> but found the particular applicant's safeguards inadequate because they do not bind board members into the future, a key diversity requirement.<sup>17</sup>

4. In the pleadings before us, SHSDA defends the Bureau's acceptance of its diversity point showing, whereas MEA and DSDA argue that the Commission wrongly rejected their showings. SHSDA, MEA, and DSDA (collectively the SDA applicants) argue that the Commission has shown similar flexibility in other diversity documentation cases.<sup>18</sup> In addition, MEA and DSDA each contends that its alternative safeguards are sufficient with respect to board members because: (1) its policy to prohibit the organization from holding an "attributable interest" would, by definition, also prohibit board interests;<sup>19</sup> (2) the policy's reference to Sections 73.7000 and 73.7003 evidences an intent to bind the board;<sup>20</sup> and (3) the Commission had accepted diversity claims not expressly referencing board members in other proceedings, including the *Seven Group Comparative Order*.<sup>21</sup>

<sup>14</sup> The relevant text of each policy can be found at *Sutter Hill Letter*, 27 FCC Rcd at 11225 (Group 7), and *Seven Group Comparative Order*, 30 FCC Rcd at 5147, para. 34 (Group 39) 5150, para. 47 (Group 48). SHSDA and DSDA each stated that it is governed by a church board without by-laws, while MEA reported that its by-laws can only be amended at "constituency meetings" held every four years. To place the claims in context, we take notice that the SDA Church is organized into regional "conferences," comprised of individual local churches. See *Proctor v. General Conference of Seventh-day Adventists*, 651 F.Supp. 1505, 1508 (N.D. Ill. 1986) (*Proctor*). See also *Lewis v. Seventh Day Adventists Lake Region Conference*, 978 F.2d 940 (6<sup>th</sup> Cir. 1992) (*Lewis*). Some conferences and the organizations within them are organized as unincorporated associations, and at least some are corporations with constitutions and/or by-laws. See *Proctor*, 651 F.Supp. at 1508-09. SDA conferences make decisions at meetings of their members (the constituency) and such meetings can be infrequent. *Id.* at 1515; see also *Lewis*, 978 F.2d at 941.

<sup>15</sup> See *Sutter Hill Letter*, 27 FCC Rcd at 11226 and SHSDA Application, File No. BNPED-20100225ADX, Exh. 1 (filed Feb. 25, 2010).

<sup>16</sup> *Seven Group Comparative Order*, 30 FCC Rcd at 5148, para. 35 (Group 39) and at 5150, para. 43 (Group 48).

<sup>17</sup> *Id.* at 5148 n.96 (Group 39) and at 5151, para. 44 (Group 48). Compare *Talking Info. Ctr.*, 22 FCC Rcd at 11121-22 (diversity credit given under the Legislative Exception where a state university's board of trustees adopted a policy statement directing the university's president to (1) notify all board members and the authority that appoints board members of the need to maintain diversity, (2) ask all board members to notify the president of any changes in their radio interests, (3) screen all new appointments to the board concerning diversity, and (4) revise new member orientation materials to advise new members of these requirements).

<sup>18</sup> See SHSDA Opposition to Petition for Reconsideration at 3-5 (filed Nov. 16, 2012) (SHSDA Opposition); MEA Petition for Reconsideration at 5-8 (filed June 12, 2015) (MEA Petition); DSDA Petition for Reconsideration at 5-8 (filed June 12, 2015) (DSDA Petition), citing *Comparative Consideration of 26 Mutually Exclusive Groups of Mutually Exclusive Applications*, Memorandum Opinion and Order, 25 FCC Rcd 11108, 11116, 11121-24, paras. 21-24, 41-43, 47-48, 51-52, 84-85, 92, 94, 96 (2010).

<sup>19</sup> See MEA Petition at 4-5; DSDA Petition at 3-4. Each also attempts to enunciate how it would enforce its diversity pledge with respect to future board members (MEA Petition at 5; DSDA Petition at 4), but such information cannot be credited because it was not part of the application at the time of filing. We will dismiss the Petitions to the extent they rely upon such new arguments. See 47 CFR § 1.106(b)(2).

<sup>20</sup> See MEA Petition at 5 and DSDA Petition at 4, citing 47 CFR §§ 73.7000 and 73.7003.

<sup>21</sup> See MEA Petition at 5-7 and DSDA Petition at 5-7, citing *Seven Group Comparative Order*, 30 FCC Rcd at 5140, 5149, 5153 at paras. 15, 38, 45, 52. See also MEA Petition at 8 and DSDA Petition at 7, citing *Comparative*

(continued....)

5. In contrast, GVCR and Mano each argues that the challenged SDA diversity showings are unlike cases in which the Commission accepted diversity claims because the other cases involved uncontested showings that were accompanied by corroborating information. They note that the instant showings are neither accompanied by nor identify a specific, written governing document in which the diversity pledge appears.<sup>22</sup> They contend that in these circumstances one cannot reliably verify the claimed policy, such as the date, place, and manner in which the alleged policy was adopted.<sup>23</sup> GVCR and Mano further argue that the diversity claims in their respective proceedings would have failed, even under the Legislative Exception, because the policies identify no mechanisms to inform and screen board members.<sup>24</sup>

6. SHSDA contends that details about its policy, such as the date, place, and manner in which it was adopted, are irrelevant and that its certification to the truth of the information in its application should be sufficient.<sup>25</sup> MEA and DSDA each argues that it needs fewer safeguards than entities using the Legislative Exception. In particular, its church board was directly involved in adopting its policy and is knowledgeable about its FCC application, whereas large universities using the Legislative Exception may have board members who are unfamiliar with the institution's FCC activities.<sup>26</sup>

### III. DISCUSSION

7. The Governing Document Requirement ensures that diversity characteristics will remain binding despite inevitable changes in board composition and interests, and that current and future board members will be aware of the need to maintain the qualities that formed the basis for the applicant's comparative selection.<sup>27</sup> We can be reasonably certain that an organization's board will remain aware of requirements memorialized in its official governing documents, as such documents are generally preserved, consulted, and central to an organization's operations. Requirements expressed elsewhere, even if worded similarly, would not provide the same level of assurance, absent sufficient notification procedures.

8. The diversity policy statements at issue in these three cases are virtually identical and, thus, the earlier Bureau decision in Group 7 must be set aside on this basis alone. Assuming *arguendo* that the SDA applicants have established that they would qualify for Legislative Exception-like processing, we would nevertheless conclude that their alternative safeguards fail to reasonably assure that *board characteristics* will be maintained. It is not just that each policy description makes no explicit mention of board members but, more importantly, that each provides no supporting information from

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*Consideration of 52 Groups*, Memorandum Opinion and Order, 25 FCC Rcd 8793, 8817-18, 8823, paras. 77-78, 96 (2010).

<sup>22</sup> See GVCR Opposition to Petition for Reconsideration at 4-5 (filed June 23, 2015) (GVCR Opposition); Mano Opposition to Petition for Reconsideration at 4-5 (filed June 23, 2015) (Mano Opposition). They argue that supported claims: (1) show actual board knowledge of the diversity pledge; (2) demonstrate compliance without the additional safeguards; and (3) provide independent proof of a board action. *Id.* Additionally, Mano questions DSDA's claim that it could not have governing documents. See Mano Opposition at 4.

<sup>23</sup> See GVCR Opposition at 4-5, Mano Opposition at 4-5.

<sup>24</sup> See GVCR Opposition at 3-5; Mano Opposition at 3-5.

<sup>25</sup> SHSDA Opposition at 6-7.

<sup>26</sup> See DSDA Reply to Opposition to Petition for Reconsideration at 4-5 (filed July 8, 2015) (DSDA Reply) and MEA Reply to Opposition for Reconsideration at 3-4 (filed July 8, 2015) (MEA Reply). DSDA also argues that Mano ignores DSDA's main point, *i.e.*, that the Commission erred in interpreting the language of its policy as insufficient with respect to board members. It contends that the issues upon which Mano focuses, such as the adequacy of DSDA's documentation, are beyond the scope of DSDA's reconsideration request. See DSDA Reply at 2-3.

<sup>27</sup> See *NCE R&O*, 15 FCC Rcd at 7419, para. 78; *NCE MO&O*, 16 FCC Rcd at 5095, paras. 55, 58.

which the Commission might discern the policy's efficacy.<sup>28</sup> For example, no applicant identifies the adoption process, explains how the alternate policy language fits into church governance, or provides details on the procedures in place to notify current and future board members of their ongoing compliance obligations. Although the Bureau correctly noted in Group 7<sup>29</sup> that it is permissible for an applicant to electronically transfer diversity language from a physical document to its application, the Bureau erred in assuming that SHSDA had done so. SHSDA never claimed nor identified a separate source document, and merely equated actions of its church board to governing documents.<sup>30</sup>

9. Contrary to the applicants' claims, it is not sufficient that each policy statement uses the phrase "attributable interests." MEA and DSDA are simply wrong as a matter of law that a policy prohibiting an applicant entity from holding an attributable interest necessarily binds its board members. The Commission's definition of "attributable interests" includes and treats separately the interests of board members and the applicant itself.<sup>31</sup> If a board member holds an attributable interest in a second nearby station, that interest is not attributed to the organization. However, such an arrangement would violate the diversity pledge because the board member would hold an attributable interest in two stations. Thus, every applicant, regardless of whether it is subject to the Governing Document Requirement or the Legislative Exception, must bind both itself and any person with an attributable interest in the applicant entity. Similarly, the policy statements' mention of two diversity-related rule sections is insufficient without some ongoing mechanism to communicate the policy to the board and to enforce its requirements.<sup>32</sup> The applicants argue that their church boards adopted and, thus, are already aware of the policies, but board interests and composition change. Undocumented or poorly documented actions can be forgotten, misremembered, or transmitted incorrectly (if at all) to successors. While MEA notes that it eventually amended its by-laws three years after its application was filed, the salient point is that MEA did not have sufficient safeguards in place at the time of application.<sup>33</sup>

10. Finally, we reject the applicants' claims of disparate treatment. As an initial matter, the applicants with which the SDA applicants compare themselves each supported its claim with an amendment to its by-laws or board resolution, as required by the Governing Document Requirement.<sup>34</sup>

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<sup>28</sup> DSDA incorrectly claims that the Commission's sole concern with DSDA's diversity commitment was the specific language used. DSDA Reply at 3. In fact, citing *Talking Info. Ctr.*, see *supra* note 17, the Commission concluded that DSDA's statement "does not provide any safeguards that reasonably assure that diversity will be maintained by future board members." *Seven Group Comparative Order*, 30 FCC Rcd at 5151, para. 44 (citing *Talking Info. Ctr.*). See *id.* at 5148, para. 36 (MEA's statement "does not provide any safeguards that reasonably ensure that diversity will be maintained by current or future board members") (citing *Talking Info. Ctr.*).

<sup>29</sup> See *Sutter Hill Letter*, 27 FCC Rcd at 11226.

<sup>30</sup> SHSDA stated that its application includes "precise language" adopted by its board and references a general affidavit from its pastor. SHSDA Further Opposition to Petition to Deny (filed July 18, 2011) at 5.

<sup>31</sup> See 47 CFR § 73.7000 (defining attributable interests as those of the applicant, its parent, subsidiaries, their officers, members of their governing boards, and entities with certain financial interests). See also *NCE Order*, 15 FCC Rcd at 7419, para. 77 ("even if an NCE organization and its parent organization do not have any other broadcast interests, we would also look to the interests of officers and directors, as we do for commercial applicants").

<sup>32</sup> See *supra* note 17 (discussing diversity credit granted where applicant demonstrated that procedures were in place to notify current and future board members of their ongoing compliance obligations). See also *NCE Order*, 15 FCC Rcd at 7411, para. 58 (explaining that the Commission will consider "alternative safeguards . . . if they reasonably assure that board characteristics will be maintained during the four-year holding period," including a "description of procedures it has in place to effectively notify appointing officials and board members, both current and future, of their need to act consistently with the . . . diversity representations to the Commission").

<sup>33</sup> See 47 CFR § 73.7003(e); MEA Petition at 3; MEA Reply at 3.

<sup>34</sup> See *Seven Group Comparative Order*, 30 FCC Rcd at 5151 n.115, citing *NCE MX Group 337A*, Letter Order, 26 FCC Rcd 6020 (MB 2011). To the extent that any of the other applicants were subject to petitions, diversity matters (continued....)



Because the applicants in the cited cases were not seeking an exception to the Governing Document Requirement, they were not similarly situated to the SDA applicants.<sup>35</sup> Moreover, none of the diversity claims in the allegedly similar applications were challenged in a petition to deny. As explained in the *NCE Order*, the NCE application form is “a simple one in which the Commission . . . rel[ies] on [applicants’] certifications,” and “competing applicants . . . verify that competing applicants qualify for the points claimed.”<sup>36</sup> The allegedly disparate decisions at issue involved tentative acceptances of applicant self-certifications, similar to the Commission’s tentative acceptance of the SDA applicants’ certifications on initial review. In each case, there was the same possibility of closer examination in the event of a petition. The other cases, however, did not proceed to a more-in-depth review because those diversity claims were uncontested. DSDA contends that the lower level of scrutiny afforded to non-challenged certifications is “hardly a ringing endorsement” of the Commission’s processes,<sup>37</sup> but it does not show that it was treated differently from like (petitioned) applicants. To the extent the SDA applicants claim that the language in these unchallenged diversity commitments was also inadequate, such a claim, even if accurate, would not justify acceptance of the applicants’ inadequate diversity commitments, particularly in the face of petitions to deny these applications. We affirm dismissal of the MEA Application in Group 39 and of the DSDA Application in Group 48. We reverse the Bureau’s ruling on the sufficiency of SHSDA’s diversity showing in Group 7 and will dismiss the SHSDA application.

#### IV. ORDERING CLAUSES

11. **Severability.** 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>38</sup> 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. 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.

12. **NCE Reserved Allotment Group 7.** Accordingly, IT IS ORDERED, that the informal request of Farms of Amador IS GRANTED with respect to the Media Bureau’s decision (27 FCC Rcd 11218, Letter Order (MB 2012)) involving the application of Sutter Hill Seventh-Day Adventist Church (File No. BNPED-20100225ADX), and that application IS DISMISSED. We further direct the staff to provide the remaining tentatively selected applicants a ninety (90)-day period from the date of release of this Order in which to reach a time-sharing 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 (File No. BNPED-20100225AAO), and Sonora Sierra Heritage Foundation (File No. BNPED-20100226AJU), CONDITIONED UPON each selectee’s compliance with Section 73.7005 of the Commission’s rules, 47 CFR § 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

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were not at issue. Although SHSDA now equates its policy to a governing resolution (SHSDA Opposition at 4), its application made no such claim and it did not submit a copy of any such resolution.

<sup>35</sup> See *supra* notes 17 and 32 (discussing factors the Commission will consider when an applicant seeks an exception to the Governing Document Requirement).

<sup>36</sup> *NCE Order*, 15 FCC Rcd at 7423, para. 89.

<sup>37</sup> DSDA Petition at 7.

<sup>38</sup> See 5 U.S.C. §§ 702, 704, 706; 47 U.S.C. §§ 309(d), 402(b), 405; 47 CFR §§ 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).

Commission's rules, 47 CFR § 73.202(a)(1)(ii), which requires that the NCE stations provide the requisite level of first and second NCE service. If the applicants are unable to reach a voluntary time-sharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate time-sharing arrangement.

13. **NCE Reserved Allotment Group 39.** Accordingly, IT IS ORDERED, that the Petition for Reconsideration of Mount Ellis Academy of the dismissal of its application (File No. BNPED-20100226AGK) for a permit to construct a new NCE FM station at Bozeman, Montana, IS DISMISSED to the extent that it relies on information not submitted previously and DENIED in all other respects. IT IS FURTHER ORDERED, that the grant of the application of Gallatin Valley Community Radio (File No. BNPED-20100225ADQ) for a construction permit for a new NCE FM station at Bozeman, Montana, IS AFFIRMED.

14. **NCE Reserved Allotment Group 48.** Accordingly, IT IS ORDERED, that the Petition for Reconsideration of Dallas Seventh-Day Adventist Church of the dismissal of its application (File No. BNPED-20100223AAB) for a permit to construct a new NCE FM station at Dallas, Oregon, IS DISMISSED to the extent that it relies on information not submitted previously and DENIED in all other respects. We further direct the staff to provide the remaining tentatively selected applicants a ninety (90)-day period from the date of release of this Order in which to reach a time-sharing agreement among themselves and, pursuant to an acceptable agreement, TO GRANT the applications of Calvary Chapel of McMinnville, Inc. (File No. BNPED-20100222ACK), Mano a Mano Family Center (File No. BNPED-20100225ADD), and Capital Community Television, Inc. (File No. BNPED-20100226AEJ) CONDITIONED UPON each selectee's compliance with Section 73.7005 of the Commission's rules, 47 CFR § 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 CFR § 73.202(a)(1)(ii), which requires that the NCE stations provide the requisite level of first and second NCE service, and PROVIDED THAT, Calvary Chapel of McMinnville, Inc. must surrender or otherwise divest itself of its license for low power FM station KKJC-LP, McMinnville, Oregon, prior to commencement of program tests of the full service NCE FM station. If the applicants are unable to reach a voluntary time-sharing agreement, the staff shall designate the applications for hearing on the sole issue of an appropriate time-sharing arrangement.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary