

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

In the Matter of	)	MX Group Numbers 39, 59, 66, 72, 111,
	)	125, 126, 128, 144, 189, 191, 356
<b>Threshold Fair Distribution Analysis of 12</b>	)	
<b>Groups of Mutually Exclusive Applications</b>	)	
<b>for Permits to Construct New or Modified</b>	)	
<b>Noncommercial Educational FM Stations Filed</b>	)	
<b>in October 2007 Window</b>	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: August 20, 2008**

**Released: August 21, 2008**

By the Chief, Audio Division, Media Bureau

**I. BACKGROUND**

1. The Media Bureau (“Bureau”) has before it for comparative consideration 12 groups of mutually exclusive applications for new or modified noncommercial educational (“NCE”) FM station construction permits.<sup>1</sup> By this Memorandum Opinion and Order (“Order”), the Bureau performs threshold analyses and identifies the tentative selectee in each group. Petitions to deny the application of any of these tentative selectees must be filed within 30 days of the date of release of this Order.<sup>2</sup>

2. The groups addressed in this Order consist of applications that were filed or amended in October 2007, during the first filing window for NCE FM applications.<sup>3</sup> These applicants have had an opportunity to settle among themselves<sup>4</sup> and are now subject to a simplified, comparative process codified in Part 73, Subpart K, of the Commission’s Rules (the “Rules”).<sup>5</sup> During the first step of this process the

<sup>1</sup> On March 7, 2008, the Bureau issued a public notice identifying 263 groups, all of which contained four or fewer mutually exclusive NCE FM applications. *See Media Bureau Identifies Groups of Mutually Exclusive Applications*, Public Notice, 23 FCC Rcd 3914 (MB 2008). On June 18, 2008, the Bureau issued a public notice identifying an additional 148 groups, all of which contained thirteen or fewer mutually exclusive NCE FM applications. *See Media Bureau Identifies Groups of Mutually Exclusive Applications*, Public Notice, DA 08-1437, (MB rel. Jun. 18, 2008). Each of the groups analyzed herein was included on one of those Public Notices.

<sup>2</sup> *See* 47 C.F.R. § 73.7004(b).

<sup>3</sup> The Bureau suspended further processing of several hundred not cut-off new and major change NCE FM applications when the Commission imposed a licensing freeze in 2000. To avoid dismissal, these applicants were required to submit amendments during the October 2007 window to provide comparative and other information. *See Media Bureau Announces NCE FM New Station and Major Change Filing Procedures*, Public Notice, 22 FCC Rcd 15050, 15051 (MB 2007). Any such applicant that experienced a gradual, major change in ownership was directed also to request a waiver of 73.3573 of the Commission’s Rules, 47 C.F.R. § 73.3573, as part of its window-amended filing to avoid dismissal. *Id.*; *See also Comparative Consideration of 76 Groups of Mutually Exclusive Applications*, Memorandum Opinion and Order, 22 FCC Rcd 6101, 6125 (2007).

<sup>4</sup> *See Window Opened to Expedite Grant of New NCE Station Construction Permits*, Public Notice, 22 FCC Rcd 19438 (MB 2007).

<sup>5</sup> 47 C.F.R. §§ 73.7000 – 7005.

Bureau, acting pursuant to delegated authority,<sup>6</sup> uses service area population data and certifications provided by the applicants to perform a threshold analysis.

## II. THRESHOLD FAIR DISTRIBUTION PROCEDURES

3. A threshold “fair distribution” analysis is performed on mutually exclusive NCE FM groups only if applicants within the group propose to serve different communities and will provide a new first and/or second NCE aural service to a substantial population. In such cases, the Bureau, consistent with Section 307(b) of the Communications Act of 1934, as amended (the “Act”),<sup>7</sup> performs a threshold determination as to whether grant of any of the applications would best further the fair, efficient, and equitable distribution of radio service among communities.<sup>8</sup> An NCE FM applicant is eligible to receive a Section 307(b) preference if it would provide a first or second reserved band channel NCE aural service to at least ten percent of the population (in the aggregate), within the proposed station’s service area, provided that the population served is at least 2,000 people.<sup>9</sup> An applicant must support its fair distribution claim with an exhibit identifying the population residing within the proposed station’s 60 dBu service contour and the number of people that would receive a new first or second NCE aural service.<sup>10</sup>

4. If only one applicant qualifies for a “fair distribution” preference, the preference is dispositive with respect to applications for different communities. If more than one applicant in a mutually exclusive group qualifies for the preference, we compare each applicant’s first service population coverage totals.<sup>11</sup> An applicant will receive a dispositive fair distribution preference by proposing a first NCE aural service to at least 5,000 more potential listeners than the next highest applicant’s first service total.<sup>12</sup> If no applicant is entitled to a first service preference, we consider combined first and second NCE aural service population totals and apply the same 5,000-listener threshold. At each stage of the Section 307(b) analysis, any applicant that is comparatively disfavored in terms of eligibility or service totals is eliminated. The process ends when the Bureau determines that one applicant is entitled to a preference or that none of the remaining applicants can be selected or eliminated

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<sup>6</sup> See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications*, Memorandum Opinion and Order, 22 FCC Rcd 6101, n.16. See also 47 C.F.R. §§ 0.61 and 0.283.

<sup>7</sup> See 47 U.S.C. § 307(b); 47 C.F.R. § 73.7002; *Reexamination of Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7397-98 (2000) (“NCE Order”).

<sup>8</sup> See 47 U.S.C. § 307(b) (“In considering applications for licenses ... when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”); 47 C.F.R. § 73.7002(a).

<sup>9</sup> See 47 C.F.R. § 73.7002(b). Applicants were required to use the most recently available, *i.e.*, 2000 Census, population data. See FCC Form 340, Instructions for Section III. An applicant’s fair distribution showing must be computed as of time of filing (close of the filing window for applications filed prior to the window) and cannot be enhanced thereafter. See 47 C.F.R. § 73.7003(e) and (f)(3); *Media Bureau Announces NCE FM New Station and Major Change Filing Procedures*, 22 FCC Rcd 15050, 15051 (MB 2007); *Reexamination of Comparative Standards for Noncommercial Applicants*, Memorandum Opinion and Order, 16 FCC Rcd 5074, 5082-83 (2001) (“NCE MO&O”). However, an applicant that subsequently makes engineering changes that would diminish its fair distribution position must amend its application to reflect that diminished position. See 47 C.F.R. §§ 1.65 and 73.7003(e).

<sup>10</sup> See FCC Form 340, Instructions for Section III, Questions 1 and 2; Exhibit 6.

<sup>11</sup> See 47 C.F.R. § 73.7002(b).

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

based on a Section 307(b) preference. In the latter case, all remaining applicants proceed to a point system analysis. Applicants that have received a Section 307(b) preference are required to construct and operate technical facilities substantially as proposed, and cannot downgrade service to the area on which the preference was based for a period of four years of on-air operations.<sup>13</sup>

### III. GROUP-BY-GROUP ANALYSIS

5. This Section contains narrative descriptions of our analyses, organized chronologically by group number. Unless otherwise noted, each component of the analysis is based on information provided by each of the respective applicants.<sup>14</sup>

6. **Group 39.** This group consists of three applications to serve different communities in California. Life on the Way Communications, Inc. (“LWC”) proposes to serve Hemet. California State University Foundation, Long Beach (“Foundation”) proposes to serve Perris. San Bernadino Acorn (“SBA”) proposes to serve San Bernadino. Foundation asserts that it is eligible for a fair distribution preference based solely on second service population totals.<sup>15</sup> LWC and SBA state that they are not eligible for a fair distribution preference. Accordingly, LWC and SBA are eliminated. Foundation is the tentative selectee in Group 39.

7. **Group 59.** There are three applications in this group. CSN International (“CSN”) filed an application shortly before adoption of the point system, proposing to construct a new station that would serve Eustis, Florida. The application was not cut-off from competing proposals under the rules then in effect. Thereafter, Cornerstone Broadcasting Corp. (“Cornerstone”) filed an application for minor modification of the facilities of WJLH(FM), Flagler Beach, Florida which was mutually exclusive with CSN’s proposal. As a minor modification, Cornerstone’s proposal did not need to await the opening of a filing window. CSN and Cornerstone have both amended their applications to include comparative information that was not required as part of their original applications. During the filing window, Westminster Academy (“WA”) filed an application proposing a new NCE station serving Umatilla, Florida, which was mutually exclusive with those filed by CSN and Cornerstone. CSN and WA both assert that they are eligible for a fair distribution preference.<sup>16</sup> Cornerstone does not and, therefore is eliminated.

8. Neither CSN nor WA claims a first service preference and, therefore, we consider their aggregated first and second service. CSN claims that it would provide a new first or second service to 38,554 people (1,947 first service plus 36,607 second service). WA claims that it would provide a new first or second service to 32,265 people (1,473 first service plus 30,792 second service). CSN would

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<sup>13</sup> See *id.* at § 73.7005(b).

<sup>14</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(1) and (2) of their applications and associated exhibits.

<sup>15</sup> See Foundation Application, Questions III(1), III(2), and associated exhibits. Foundation’s 60 dBu contour encompasses 312,385 people. Foundation’s claimed aggregated first and second NCE service is 36,520 people (all second service). Thus, it would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>16</sup> See CSN and WA Applications, Questions III(1), III(2), and associated exhibits. CSN’s 60 dBu contour encompasses 79,797 people. CSN’s claimed aggregated first and second NCE service is 38,554 people. WA’s 60 dBu contour encompasses 65,951 people. WA’s claimed aggregated first and second NCE service is 32,265 people. Thus, each would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

provide new NCE service to at least 5,000 more people than WA. Thus, WA is eliminated and CSN is the tentative selectee in Group 59.

9. **Group 66.** In this group, Community Public Radio, Inc. (“CPR”) proposes to serve Brown’s Crossing, Georgia and Georgia College and State University (“GCSU”) proposes to serve Milledgeville, Georgia. GCSU asserts that it is eligible for a fair distribution preference.<sup>17</sup> CPR does not. Accordingly, CPR is eliminated. GCSU is the tentative selectee in Group 66.

10. **Group 72.** This group consists of four applications to serve three different communities in Iowa. Shining Light Ministries (“SLM”) and Boone Biblical Memorial Church (“BBMC”) propose to serve Boone. Union Valley Baptist Church, Inc. (“Union”) proposes to serve Radcliffe. Unitarian Universalist Fellowship of Ames (“Fellowship”) proposes to serve Story Cliff. SLM and Union state that they are not eligible for a fair distribution preference. BBMC and Fellowship assert that they are eligible for a preference based solely on second service population totals.<sup>18</sup> Fellowship claims that it would provide a new first or second service to 8,671 people (all second service). BBMC, does not state how many people it would provide with its claimed second service, and thus we are not able to determine whether it satisfies the 10 percent threshold and 2000-person minimum criteria or to compare the size of its claim to that of Fellowship. Moreover, BBMC appears not to have considered that, prior to the filing of its application, the Commission granted an authorization which, once constructed, will provide a second service to BBMC’s entire proposed service area. Accordingly, SLM, BBMC, and Union are eliminated and Fellowship is the tentative selectee in Group 72.

11. **Group 111.** In Group 111, Morgan Brook Christian Radio, Inc. (“MBCR”) proposes to serve Baptist Village, Massachusetts, and Nehemiahs Neighbors Church (“NNC”) proposes to serve South Monson, Massachusetts. Each applicant claims that that it is eligible for a fair distribution preference.<sup>19</sup> MBCR would provide a new first or second NCE service to 2,756 people (all second service). NNC did not make a complete fair distribution showing within the October 2007 filing window. Specifically, NNC’s original application answered “yes” that NNC was entitled to preferences based on first and second service but failed to identify the number of people who would receive those services. In place of a required exhibit, NNC stated “I had trouble attaching my contours but I believe my calculations are correct.”<sup>20</sup> Elsewhere in the application, NNC indicated that it would only provide a new NCE service to 56 people.<sup>21</sup> On April 15, 2008, NNC tendered an amendment which would provide missing

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<sup>17</sup> See GCSU Application, Questions III(1), III(2), and associated exhibits. GCSU’s 60 dBu contour encompasses 63,087 people. GCSU’s claimed aggregated first and second NCE service is 15,461 people. Thus, it would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>18</sup> See BBMC and Fellowship Applications, Questions III(1), III(2), and associated exhibits. Fellowship’s 60 dBu contour encompasses 9,340 people. Fellowship’s claimed aggregated first and second NCE service is 8,871 people (all second service). Thus, it would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people. BBMC’s 60 dBu contour encompasses 16,925 people. BBMC does not state how many people it claims to provide with a first or second NCE service.

<sup>19</sup> See MBCR and NNC Applications, Questions III(1), III(2), and associated exhibits. MBCR’s 60 dBu contour encompasses 13,142 people. MBCR’s claimed aggregated first and second NCE service is 2,756 people. Thus, it would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people. NNC’s original application did not demonstrate service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>20</sup> See NNC Application, Questions III(1) and III(2).

<sup>21</sup> *Id.*, Questions IV(4).

information and/or change information from that provided originally. The amendment acknowledges that NNC does not qualify for a fair distribution preference based on first service alone, but asserts that NNC qualifies for a preference based on aggregated first and second service because its 60 dBu contour encompasses 11,076 people and its claimed aggregated first and second NCE service is 8,368 people. NNC's amendment of its incomplete application approximately 6 months after close of the window is a prohibited attempt to enhance its qualifications after close of the filing window. MBCR was the only applicant to timely demonstrate that it was entitled to a fair distribution preference. Accordingly, NNC is eliminated and MBCR is the tentative selectee in Group 111.

12. **Group 125.** The four applicants in this group would serve different communities in Michigan. Midland Seventh-Day Adventist Church ("MSAC") would serve Midland. Smile FM ("Smile") proposes to serve Mount Forest. Saidnewsfoundation ("News") proposes to serve Pinconning. Partnership Ministries, Inc. d/b/a Passion Communications ("PMI") proposes to serve Shields. Smile is the only applicant in this group to claim that it is eligible for a fair distribution preference.<sup>22</sup> Accordingly, NSAC, News, and PMI are eliminated. Smile is the tentative selectee in Group 125.

13. **Group 126.** The two applicants in this group would serve different communities in Michigan. Detroit Summer ("DS") proposes to serve Fraser and Smile FM ("Smile") proposes to serve Grosse Point Shores. Each claims that it is eligible for a fair distribution preference based solely on second service.<sup>23</sup> DS would provide a first or second NCE service to 78,771 people (0 first service plus 78,771 second service). Smile would provide a first or second NCE service to 468,544 people (0 first service plus 468,544 second service). Smile would provide new NCE service to at least 5,000 more people than DS. Accordingly, Smile is the tentative selectee in Group 126.

14. **Group 128.** This group consists of two applications to serve different communities in Michigan. Smile FM ("Smile") proposes to serve China Township. De Mujer a Mujer International ("DMMI") proposes to serve Marine City. Smile asserts that it is eligible for a fair distribution preference.<sup>24</sup> DMMI does not. Accordingly, DMMI is eliminated and Smile is the tentative selectee in Group 128.

15. **Group 144.** In Group 144, Delta Blues Foundation, Inc. ("Delta") proposes to serve Clarksdale, Mississippi, and McGee Communications ("McGee") proposes to serve Grenada, Mississippi. Each claims that it is eligible for a fair distribution preference.<sup>25</sup> Only Delta asserts that it is entitled to a

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<sup>22</sup> See Smile's Application, Questions III(1), III(2), and associated exhibits. Smile's 60 dBu contour encompasses 23,279 people, and its claimed aggregated first and second NCE service is 9,999 people. Thus, it would provide combined first and second NCE service to ten percent of the population within its respective 60 dBu contour and to more than 2,000 people.

<sup>23</sup> See DS's and Smile's Applications, Questions III(1), III(2), and associated exhibits. Smile's 60 dBu contour encompasses 537,650 people, and its claimed aggregated first and second NCE service is 468,544 people. These numbers reflect the smaller figures Smile submitted in an amendment to its original higher claim. DS's 60 dBu contour encompasses 143,594 people, and its claimed aggregated first and second NCE service is 78,771 people. Thus, each would provide combined first and second NCE service to ten percent of the population within its respective 60 dBu contour and to more than 2,000 people.

<sup>24</sup> See Smile's Application, Questions III(1), III(2), and associated exhibits. Smile's 60 dBu contour encompasses 50,933 people. Smile's claimed aggregated first and second NCE service is all 50,933 people. Thus, it would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>25</sup> See Delta and McGee Applications, Questions III(1), III(2), and associated exhibits. Delta's 60 dBu contour encompasses 42,726 people. Delta's claimed aggregated first and second NCE service is 32,925 people. McGee's 60 dBu contour encompasses 30,936 people. McGee's claimed aggregated first and second NCE service is 19,219



first service preference, and we have determined this claim is erroneous because Delta's claimed first service to 2,999 people is less than ten percent of the 42,726 people within its 60 dBu contour. If no proposal prevails on first service, we consider combined first and second service population totals. Delta would provide a new first or second NCE service to 32,925 people (2,999 first service plus 29,926 second service). McGee would provide new first or second NCE service to 19,219 people (0 first service plus 19,219 second service). Because Delta would provide a new first or second NCE service to at least 5,000 more listeners than McGee, Delta is the tentative selectee in Group 144.

**16. Group 189.** The four applicants in this group would serve different communities in New York. Free 103Point9 ("Free") would serve Acra. JCM Radio of NY, Inc. ("JCM") proposes to serve Coxsackie. Foothills Public Radio, Inc. ("Foothills") plans to serve Durham. Redeemer Broadcasting, Inc. ("RBI") proposes service to Jefferson Heights. Each claims that it is eligible for a fair distribution preference.<sup>26</sup> JCM, however, provides only a map with no numbers to support its claim. Because JCM does not state how many people it would provide with its claimed second service, we are not able to determine whether it satisfies the 10 percent threshold and 2000-person minimum criteria or to compare the size of its claim to that of the other applicants in this group. Accordingly, JCM is eliminated. The remaining three applicants all assert that they are entitled to a first NCE service preference and identify the number of people to whom they would provide such service. Foothills, RBI, and Free each respectively claim that they would provide a new first NCE service to 3,794 people, 9,290 people, and 12,574 people. Foothills is eliminated because the next best proposal of RBI would serve at least 5,000 more people. The proposals of RBI and Free, however, would provide a comparable first service and proceed to consideration of their combined first and second NCE service population totals. Free would provide a first or second NCE service to 23,125 people (12,574 first service plus 10,551 second service). RBI would provide a first or second service to 13,012 people (9,290 first service plus 3,722 second service). Free is the tentative selectee in Group 189 because it would serve at least 5,000 more people than RBI.

**17. Group 191.** The two applicants in this group would serve different communities in Ohio. Clyde Educational Broadcasting Foundation ("Clyde") proposes to serve Coshocton. Newcomerstown Exempted Village Schools ("NEVS") proposes to serve Newcomerstown. Each claims that it is eligible for a fair distribution preference.<sup>27</sup> NEVS, however, appears to be mistaken based on use of an incorrect methodology. Specifically, NEVS's claim is based on its proposal to construct the first full service NCE station *licensed to* the village of Newcomerstown, which has a population of 4,008, without considering service *received from* NCE stations licensed to other communities.<sup>28</sup> Moreover, NEVS does not identify

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

<sup>26</sup> See Free's, JCM's, Foothills's and RBI's Applications, Questions III(1), III(2), and associated exhibits. Free's 60 dBu contour encompasses 78,844 people, and its claimed aggregated first and second NCE service is 23,125 people. JCM's 60 dBu contour encompasses 46,003 people, and it does not identify the number of people that it claims would receive an aggregated first and second NCE service. Foothills's 60 dBu contour encompasses 9,982 people, and its claimed aggregated first and second NCE service is 9,010 people. RBI's 60 dBu contour encompasses 25,759 people, and its claimed aggregated first and second NCE service is 13,012 people. Thus, each would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>27</sup> See Clyde's and NEVS's Applications, Questions III(1), III(2), and associated exhibits. Clyde's 60 dBu contour encompasses 32,334 people, and its claimed aggregated first and second NCE service is 22,643 people (all second service). NEVS does not state how many people are encompassed by its 60 dBu contour. Thus, each would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>28</sup> See 47 C.F.R. § 73.7002(b).

the number of people residing within its 60 dBu contour, asserting only that the Newcomersville population is at least ten percent of that unstated figure and stating elsewhere in its application that it would provide new NCE service to only 15 people.<sup>29</sup> Accordingly, we cannot accept NEVS's claim of eligibility for a fair distribution preference. NEVS is eliminated and Clyde is the tentative selectee in Group 191.

18. **Group 356.** This group consists of ten applications to serve nine different communities in Kentucky. Appalshop, Inc. ("Appalshop") and Eastern Kentucky University ("EKU") both propose to serve Pineville. The other applicants and their proposed communities are: Mountain Radio Media ("Mountain") for Manchester; Educational Cultural Broadcasters Group, Inc. ("ECBG") for Corbin; Breathitt Listeners Choice Radio, Inc. ("Breathitt") for Jackson; Bible Baptist Church ("BBC") for Hazard; Middlesboro Board of Education ("MBE") for Middlesboro; FM 90.1, Inc. ("FMI") for Paintsville; Spirit Broadcasting Group, Inc. ("SBG") for Cumberland; and Shredding the Darkness ("STD") for Salyersville. BBC, the only applicant not to claim a fair distribution preference, is eliminated. Mountain also is eliminated because, although it claims a preference based entirely on second service, it provides no information about the number of people who would receive such service. Thus, we are not able to determine whether Mountain satisfies the 10 percent threshold and 2000-person minimum criteria or to compare the size of its claim to that of other applicants. The remaining eight applicants claim and state the basis for their claims to be eligible for a fair distribution preference.<sup>30</sup>

19. ECBG claims first service to 15,394 people, Appalshop to 13,728 people, MBE to 22,629 people, FMI to 22,854 people, ECU to 28,168 people and STD to 22,729 people. Neither Breathitt nor SBG certifies that it is eligible for a first service preference and both are, thus, eliminated. ECU, the applicant proposing the most first NCE service, would provide such service to at least 5,000 people more than any other applicant. Appalshop, the only applicant that proposes the same community of license as ECU, proposes first NCE service to 5,000 people fewer than applicants for different communities. Accordingly, all applicants other than ECU are eliminated. ECU is the tentative selectee in Group 356.

#### IV. ADDITIONAL MATTERS

20. **Acceptability Studies.** Once the Bureau identifies a tentative selectee pursuant to the fair distribution process, the next step is to consider whether the selectee's application has defects.<sup>31</sup> If found

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<sup>29</sup> See NEVS's Application, Questions III(1) and IV(4).

<sup>30</sup> See Appalshop's, ECU's, ECBG's, Breathitt's, MBE's, FMI's, SBG's, and STD's Applications, Questions III(1), III(2), and associated exhibits. Appalshop's 60 dBu contour encompasses 26,343 people. Appalshop's claimed aggregated first and second NCE service is 26,343 people. ECU's 60 dBu contour encompasses 99,330 people. ECU's claimed aggregated first and second NCE service is 60,105 people. ECBG's 60 dBu contour encompasses 109,734 people. ECBG's claimed aggregated first and second NCE service is 40,442 people. Breathitt's 60 dBu contour encompasses 8,031 people. Breathitt's claimed aggregated first and second NCE service is 5,531 people. MBE's 60 dBu contour encompasses 68,367 people. MBE's claimed aggregated first and second NCE service is 43,071 people. FMI's 60 dBu contour encompasses 53,586 people. FMI's claimed aggregated first and second NCE service is 36,379 people. SBG's 60 dBu contour encompasses 84,563 people. SBG's claimed aggregated first and second NCE service is 17,343 people. STD's 60 dBu contour encompasses 48,512 people. STD's claimed aggregated first and second NCE service is 22,729 people. Thus, each would provide combined first and second NCE service to ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>31</sup> If a tentative selectee's application is found unacceptable for filing, it is dismissed. The applicant then has one opportunity to submit a curative amendment and a petition for reconsideration requesting reinstatement *nunc pro tunc* within 30 days, provided that the amendment is minor and does not alter the fair distribution preference. See 47 C.F.R. § 73.3522(b)(1). A tentative selectee that is unable to cure the defect is disqualified.

acceptable for filing, public notice of that fact is given, and petitions to deny may be filed within 30 days following the release of the public notice.

21. The Bureau has studied the applications of all of the tentative selectees identified herein and has determined that they are acceptable for filing. All of the tentative selectees identified in this Order appear to be fully qualified to become the licensee of the new or modified NCE FM stations they have proposed. We tentatively conclude that the grant of their applications would serve the public interest, convenience, and necessity. It is our intention to grant the applications if, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application. Such determinations of grantability may, of course, involve additional matters that may impact the timing or outcome of a decision. For example, a proposal to serve an area near the United States border with Canada or Mexico cannot become ripe for grant prior to the successful completion of international coordination.

22. **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. Any petition or appeal affecting a particular group will not delay the finality of our decision with respect to groups where no petition to deny, petition for reconsideration, or appeal is filed.

## V. ORDERING CLAUSES

23. 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>32</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.

24. **Group 39.** Accordingly, IT IS ORDERED, That the Application filed by California State University Foundation, Long Beach (File No. BNPED-20071019ACH) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Perris, 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 intend, by public notice, TO DISMISS the mutually exclusive applications of Life on the Way Communications, Inc. (File No. BNPED-20071022AUR) and San Bernadino Acorn (File No. BNPED-20071022AJF) and TO GRANT the application of California State University Foundation, Long Beach (File No. BNPED-20071019ACH) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

25. **Group 59.** Accordingly, IT IS ORDERED, That the Application filed by CSN International (File No. BNPED-20071022DXQ) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Eustis, 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

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<sup>32</sup> See 5 U.S.C. §§ 702, 704, 706; 47 U.S.C. §§ 309(d), 402(b), 405; 47 C.F.R. §§ 1.106-08, 1.120, 73.7004. In cases that involve separate mutually exclusive groups but present common issues, the petitions or appeals may be filed jointly or may be consolidated at the discretion of the Commission or the court. See, e.g., FED. R. APP. P. 3(b).



the tentative selectee's application, we intend, by public notice, TO DISMISS the mutually exclusive applications of Westminster Academy (File No. BNPED-20071022BLG) and Cornerstone Broadcasting Corp. (File No. BNPED-20070906ADM) and TO GRANT the application of CSN International (File No. BNPED-20071022DXQ) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

26. **Group 66.** Accordingly, IT IS ORDERED, That the Application filed by Georgia College and State University (File No. BNPED-20071018AOO) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Milledgeville, 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 intend, by public notice, TO DISMISS the mutually exclusive application of Community Public Radio, Inc. (File No. BNPED-20071015DMG) and TO GRANT the application of Georgia College and State University (File No. BNPED-20071018AOO) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

27. **Group 72.** Accordingly, IT IS ORDERED, That the Application filed by Unitarian Universalist Fellowship of America (File No. BNPED-20071019BBU) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Story City, 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 intend, by public notice, TO DISMISS the mutually exclusive applications of Shining Light Ministries (File No. BNPED-20071012AIJ), Boone Biblical Memorial Church (File No. BNPED-20071012AIU), Union Valley Baptist Church, Inc. (File No. BNPED-20071022BMW) and TO GRANT the application of Unitarian Universalist Fellowship of America (File No. BNPED-20071019BBU) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

28. **Group 111.** Accordingly, IT IS ORDERED, That the Application filed by Morgan Brook Christian Radio, Inc. (File No. BNPED-20071022BHM) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Baptist Village, Massachusetts 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 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, TO DISMISS the mutually exclusive application of Nehemiahs Neighbors Church (File No. BNPED-20071022BUV) and TO GRANT the application of Morgan Brook Christian Radio, Inc. (File No. BNPED-20071022BHM) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

29. **Group 125.** Accordingly, IT IS ORDERED, That the Application filed by Smile FM, Inc. (File No. BNPED-20071019AIK) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Mount Forest, Michigan 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 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, TO DISMISS the mutually exclusive applications of Midland Seventh-Day Adventist Church (File No. BNPED-20071022AWS), Saidnewsfoundation (File No. BNPED-20071017AIY), and Partnership Ministries, Inc. d/b/a Passion Communications (File No. BNPED-20071018AVW) and TO GRANT the application of Smile FM, Inc. (File No. BNPED-20071019AIK) CONDITIONED UPON that selectee's compliance with Section

73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

30. **Group 126.** Accordingly, IT IS ORDERED, That the Application filed by Smile FM, Inc. (File No. BNPED-20071019AFB) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Grosse Point Shores, Michigan 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 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, TO DISMISS the mutually exclusive application of Detroit Summer (File No. BNPED-20071019AFV) and TO GRANT the application of Smile FM, Inc. (File No. BNPED-20071019AFB) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

31. **Group 128.** Accordingly, IT IS ORDERED, That the Application filed by Smile FM, Inc. (File No. BNPED-20071019AOG) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in China Township, Michigan 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 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, TO DISMISS the mutually exclusive application of De Mujer a Mujer International (File No. BNPED-20071022AGR) and TO GRANT the application of Smile FM, Inc. (File No. BNPED-20071019AOG) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

32. **Group 144.** Accordingly, IT IS ORDERED, That the Application filed by Delta Blues Foundation, Inc. (File No. BNPED-20071019AIB) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Clarksdale, Mississippi and that its application is ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, TO DISMISS the mutually exclusive application of McGee Communications (File No. BNPED-20071015ABT) and TO GRANT the application of Delta Blues Foundation, Inc. (File No. BNPED-20071019AIB) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

33. **Group 189.** Accordingly, IT IS ORDERED, That the Application filed by Free103Point9Inc. (File No. BNPED-20071018ANX) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Acra, 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 a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, TO DISMISS the mutually exclusive applications of JCM Radio of NY, Inc. (File No. BNPED-20071022AJX), Foothills Public Radio, Inc. (File No. BNPED-20071022BFJ), and Redeemer Broadcasting, Inc. (File No. BNPED-20071018BBM) and TO GRANT the application of Free103Point9Inc. (File No. BNPED-20071018ANX) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

34. **Group 191.** Accordingly, IT IS ORDERED, That the Application filed by Clyde Educational Broadcasting Foundation (File No. BNPED-20071012AGY) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Coshocton, Ohio and that

its application is ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, TO DISMISS the mutually exclusive application of Newcomerstown Exempted Village Schools (File No. BNPED-20071019AWG), and TO GRANT the application of Clyde Educational Broadcasting Foundation (File No. BNPED-20071012AGY) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

35. **Group 356.** Accordingly, IT IS ORDERED, That the Application filed by Eastern Kentucky University (File No. BNPED-20071019AGW) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Pineville, Kentucky 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 intend, by public notice, TO DISMISS the mutually exclusive applications of Mountain Radio Media (File No. BNPED-20071012APL), Educational Cultural Broadcasters Group, Inc. (File No. BNPED-20071015ADQ), Breathitt Listeners Choice Radio, Inc. (File No. BNPED-20071015AFQ), Bible Baptist Church (File No. BNPED-20071016AIH), Appalshop, Inc. (File No. BNPED-20071017AHG), Middlesboro Board of Education (File No. BNPED-20071018ACX), FM 90.1, Inc. (File No. BNPED-20071018AKX), Spirit Broadcasting Group, Inc. (File No. BNPED-20071018ARV), and Shredding the Darkness (File No. BNPED-20071022BBZ), and TO GRANT the application of Eastern Kentucky University (File No. BNPED-20071019AGW) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
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