

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

In the Matter of	)	NCE MX Group Numbers 880611, 89101E,
	)	94116, 94123E, 950215, 95031E, 95062E,
Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations	)	95072E, 95076E, 95083E, 95095E, 951129,
	)	960304, 960813, 96086E, 960908, 960911,
	)	961010, 961011, 961121, 970111, 970113,
	)	970209, 970310, 970312, 970514, 970520,
	)	970630, 970631, 970726, 970730, 970738,
	)	970815, 970823, 970928, 97091E, 971015,
	)	971019, 980111, 980301, 98033P, 9803HL,
	)	980401, 980404, 980415, 98043S, 980510,
	)	980605, 980609, 980616, 980619, 9806PP,
	)	980704, 980801, 980805, 980815, 980902,
	)	980910, 981003, 981005, 981010, 981106,
	)	981209, 981212, 990101, 990109, 9901XP,
	)	990306, 990307, 9903TP, 990403, 990408,
	)	990508, 990512, 990607, 990609

MEMORANDUM OPINION AND ORDER

Adopted: March 22, 2007

Released: March 27, 2007

By the Commission: Commissioners Copps, Adelstein, and McDowell issuing separate statements.

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APPENDIX – Noncommercial Educational Groups

I. BACKGROUND

1. The Commission has before it for comparative consideration approximately 200 mutually exclusive applications for new or modified noncommercial educational (“NCE”) FM station construction permits. Each of these applications is cut off from the filing of new competing applications and is mutually exclusive with at least one other cut-off application. These applications comprise 76 mutually exclusive groups.¹ By this Memorandum Opinion and Order (“Order”), the Commission determines that two of these applications should be processed as “singletons” (*i.e.*, not mutually exclusive with any other application) and tentatively selects 74 applications from the remaining 74 groups for grant by application of the NCE point system. Our selection is “tentative” because petitions to deny may be filed against the applicant tentatively selected pursuant to these point system determinations.² The Commission directs the staff to issue a public notice establishing a filing deadline for any such petitions, and to take all steps necessary to process the applications and any petitions that may be received in accordance with the procedures provided herein. Finally, we direct the staff to open a filing window for NCE FM new and major change applications in October 2007.³

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 a simplified, “paper hearing” process for selecting among such NCE applications.⁴ The revised NCE comparative procedures are codified in Part 73, Subpart K, of the Commission’s Rules (the “Rules”).⁵ Application conflicts not resolved under a “fair distribution” analysis⁶ are compared under a new NCE point system.⁷

¹ The applications discussed in this Memorandum Opinion and Order comprise the majority of the pending cut-off mutually exclusive NCE FM groups. The Commission or its staff will issue separate documents to announce tentative selectees from approximately ten additional NCE groups. There also are about a dozen groups in which disposition of a pending NCE settlement agreement is awaiting the resolution of a matter beyond the Commission’s control, such as receipt of international clearances. Finally, also pending before the staff are approximately six cases in which it received petitions in response to the tentative selection of NCE applicants pursuant to fair distribution principles. *See* 47 U.S.C. § 307(b); 47 C.F.R. § 73.7002.

² *See* 47 C.F.R. § 73.7004(b).

³ The notice should also include information concerning the filing of point supplements for NCE applications already on file which have not been cut off and which, therefore, will be considered along with applications filed during the window. *See Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Memorandum Opinion and Order, 16 FCC Rcd 5074, 5086 (2002).

⁴ *See Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Notice of Proposed Rulemaking, 10 FCC Rcd 2877 (1995), *further rules proposed*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 21167 (1998), *rules adopted*, Report and Order, 15 FCC Rcd 7386 (2000) (“NCE Order”), *vacated in part on other grounds sub nom.*, *National Public Radio v. FCC*, 254 F.3d 226 (D.C. Cir. 2001) *clarified*, Memorandum Opinion and Order, 16 FCC Rcd 5074 (“NCE MO&O”), *Erratum*, 16 FCC Rcd 10549, *recon. denied*, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002) (“NCE Reconsideration Order”), *aff’d sub nom. American Family Ass’n v. FCC*, 365 F.3d 1156 (D.C. Cir. 2004) (“American Family”), *cert. denied*, 125 S.Ct. 634 (2004) (history pertaining only to non-reserved band FM channels omitted).

⁵ 47 C.F.R. §§ 73.7000 – 7005.

⁶ *See* 47 C.F.R. § 73.7002 (procedures for selecting among mutually exclusive applicants for stations proposing to serve different communities).

⁷ *See id.*; 47 C.F.R. § 73.7003 (point system selection procedures).

3. The Commission provided these applicants several opportunities to resolve application conflicts by settlement and technical amendment.⁸ It also determined that the new comparative procedures would apply to all NCE applications. Applicants were required to file settlements or technical amendments resolving all mutual exclusivities, or NCE comparative information on FCC Forms 340 or 340-Supp, by July 19, 2001.⁹ Applicants that did not timely file such supplements were subject to dismissal.¹⁰ Comparative filings provided information as of June 4, 2001, which is also known as the “snapshot” date.¹¹ Any changes made after that snapshot date could potentially reduce, but could not increase, an applicant’s points.

4. Several judicial challenges delayed implementation of the new point system procedures.¹² However, applicants were required to keep their pending applications up to date by reporting any changes that would decrease their points.¹³ This is the Commission’s first opportunity following judicial affirmation of the point system to provide general guidance on the application of many of the NCE FM comparative criteria.¹⁴ We have organized this omnibus Order in a manner that we believe will be helpful to those desiring an overall understanding of the NCE comparative process and its components, as well as to parties that wish to focus on the outcome of a particular mutually exclusive group. In Section II of this Order, we provide an introductory overview of each comparative criterion. Section III proceeds to discuss a small number of cases that required additional Commission analysis to determine whether the applicant qualified for points under a specific criterion, as claimed. Section III’s focus is on clarifying whether points may be awarded under particular fact patterns. We have organized that discussion primarily by topic rather than by individual group because the resolution of a particular issue can provide useful guidance to all applicants, not only those within the particular group in which the issue arose. In contrast, the focus of Section IV is a narrative of the number of points that have been awarded in each of the 76 mutually exclusive groups. We believe that Section IV will be of primary interest to the parties within the particular group discussed. To avoid duplicative discussions in Sections III and IV, the group-by-group narratives in Section IV include cross-references to any topics previously discussed in greater detail in Section III. Finally, we have provided readers with an Appendix that condenses the group-by-group narratives into the form of a chart for quick reference. Readers will find a more detailed guide to the Appendix and its use of abbreviations at the beginning of that Section.

⁸ See *NCE Order*, 15 FCC Rcd at 7418; *NCE MO&O*, 16 FCC Rcd at 5106-08.

⁹ See *Deadline for NCE Settlements and Supplements Extended to July 19, 2001; Date for Calculating Comparative Qualifications Remains June 4, 2001; Mass Media Bureau Provides Examples of Application of NCE Section 307(b) Criteria*, Public Notice, 16 FCC Rcd 10892 (MB 2001) (“*Supplement Extension Notice*”).

¹⁰ See *NCE MO&O*, 16 FCC Rcd at 5083-85.

¹¹ See *Supplements and Settlements to Pending Closed Groups of Noncommercial Educational Applications Due by June 4, 2001*, Public Notice, 16 FCC Rcd 6893 (MB 2001) (“*Supplement Filing Notice*”); *Supplement Extension 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 group’s cut-off date or April 21, 2000, whichever is earlier. See *NCE MO&O*, 16 FCC Rcd at 5086.

¹² See *supra* n.4.

¹³ 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, 24740 (MB 2004) (“*Section 1.65 Notice*”).

¹⁴ The one NCE FM Order released to date focuses on the established local applicant criterion. See *American Family Ass’n et al.*, Memorandum Opinion and Order, FCC 06-176, __ FCC Rcd __ (rel. Dec. 14, 2006).

II. GENERAL NCE PROCEDURES

5. This Order discusses the results of proceedings in which we have applied the NCE FM comparative standards to 76 groups of two or more mutually exclusive NCE applicants. Except as otherwise noted, our analyses uses the points and population numbers claimed by the applicant in its point supplement, with no adjustment by the Commission. The Commission's analysis generally consists of three main components. First, the staff uses population numbers and certifications provided by the applicants in Section III of their point supplements to perform a threshold fair distribution study pursuant to Section 307(b) of the Communications Act of 1934, as amended (the "Act").¹⁵ Next, if no dispositive preference is awarded, the Commission undertakes a point system analysis. Absent our discovery of an applicant error and discussion of that error in the text of this Order, the Commission has awarded the same number of points claimed by each applicant in Section IV of its point supplement. If necessary, the Commission then makes a tie-breaker determination, based on applicant-provided numbers and certifications contained in Section V of each point supplement.

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

6. When mutually exclusive applications for permits to construct NCE FM stations propose to serve different communities, the Act requires the Commission to make 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.¹⁶ 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), provided that the population served is at least 2,000 people, within the proposed station's 60 dBu contour.¹⁷

7. If more than one applicant in a mutually exclusive group qualifies for a Section 307(b) preference, the Commission compares each applicant's first service population coverage totals.¹⁸ 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.¹⁹ If no applicant is

¹⁵ See 47 U.S.C. § 307(b).

¹⁶ *Id.* ("In considering applications for licenses ... when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."); 47 C.F.R. § 73.7002(a). A Section 307(b) analysis is ordinarily conducted at the staff level, because the Media Bureau has delegated authority to make 307(b) determinations in NCE cases. See *NCE Order*, 15 FCC Rcd at 7397. See also 47 C.F.R. §§ 0.61 and 0.283. In contrast, the *NCE Order* noted that the point system analysis, which is conducted when Section 307(b) is not determinative, is considered a simplified "hearing" for purposes of 47 U.S.C. § 155(c)(1). *NCE Order*, 15 FCC Rcd at 7420. The staff has referred the Section 307(b) analyses in each of the present groups to the Commission for consolidated analysis because Section 307(b) factors did not entirely resolve all applications in these groups and the Commission must, therefore, consider the remaining applications in a point hearing.

¹⁷ See 47 C.F.R. § 73.7002(b). Applicants were required to use the 2000 Census population data, if available by July 19, 2001. See *Supplement Filing Notice*, 16 FCC Rcd at 6893; *Supplement Extension Notice*, 16 FCC Rcd at 10892. Otherwise, they were to use the most recently available, *i.e.*, 1990, census. Applicants were also to base their "fair distribution" analysis on the snapshot date of June 4, 2001, which is applicable unless an applicant subsequently made engineering changes that would diminish its comparative position. *Id.*

¹⁸ See 47 C.F.R. § 73.7002(b). See also *Supplement Extension Notice*, 16 FCC Rcd at 10893.

¹⁹ See 47 C.F.R. § 73.7002(b).

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 Commission determines that none of the remaining applicants can be selected or eliminated based on a Section 307(b) preference. At that stage, 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.²⁰

B. Point System Selection Process.

8. The Commission compares mutually exclusive groups of NCE FM applications under the point system set forth in Section 73.7003 of the Rules.²¹ NCE authorizations awarded by use of a point system are subject to a holding period of four years of on-air operations.²² The NCE point system awards a maximum of seven merit points, based on four distinct criteria.²³ First, three points are awarded to applicants that certify that they have been local and established for at least two years. Applicants with a headquarters, campus, or 75 percent of their board members residing within 25 miles of the reference coordinates of the community of license are considered local.²⁴ Governmental units are considered local within their area of jurisdiction. To qualify for these localism points, the applicant also must certify that its governing documents require that such localism be maintained, that it has placed documentation supporting its certification in a local public inspection file, and that it has submitted that documentation to the Commission.

9. Second, two points are awarded for local diversity of ownership if the principal community contours of the applicant's proposed station and any other station in which any party to the application holds an attributable interest do not overlap.²⁵ To be awarded such points, an applicant's governing documents (*e.g.*, bylaws, constitution, or their equivalent) also must include a provision to maintain that diversity in the future. Applicants that are organizations governed by state charters that cannot be amended without legislative action are permitted to base the governing document component of their local diversity certifications on other safeguards that reasonably assure that board characteristics will be maintained.²⁶ An applicant that proposes a full service NCE station that would replace an attributable FM translator serving the same area is permitted to exclude the translator and thereby to claim diversity points if it has pledged to request cancellation of the translator authorization upon the new station's commencement of operations.²⁷

²⁰ See 47 C.F.R. § 73.7005(b).

²¹ See 47 C.F.R. § 73.7003.

²² See 47 C.F.R. § 73.7005(a).

²³ See 47 C.F.R. § 73.7003(b).

²⁴ An applicant relying on local board residence to claim points as an established local applicant must demonstrate that its governing documents (*e.g.*, bylaws) require that such localism be maintained despite board changes. See 47 C.F.R. § 73.7003(b)(1); *NCE Order*, 15 FCC Rcd at 7426.

²⁵ 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.*

²⁶ See *NCE MO&O*, 16 FCC Rcd at 5095.

²⁷ *Id.* at 5102-03.

10. 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.²⁸ Only three applicants in the 76 groups claimed points as statewide networks. Each of these applicants is listed as receiving two points in the appropriate Appendix column. All other applicants will receive no points under this comparative criterion.

11. Fourth, an applicant that proposed the best technical proposal (*i.e.*, proposed service to the largest population and area, excluding substantial areas of water) may receive up to two points. An applicant receives one point if its proposed service area *and* population are ten percent greater than those of the next best proposal, or two points if both are 25 percent greater than those of the next best proposal.²⁹ If the best technical proposal does not meet the 10 percent threshold, no applicant is awarded points under this criterion. In considering this criterion, we have generally accepted the size of the each proposed station's 60 dBu contour in square kilometers, as reported by the applicant, as well as the reported population within that area. We have rounded numbers expressed in decimals to the nearest whole numbers.

12. Finally, the Commission tallies the total number of points awarded to each applicant. The applicant with the highest score in a group is designated the "tentative selectee."

C. Tie-Breakers.

13. If two or more applicants in a group tie for the highest number of points awarded, any applicant with fewer points are eliminated and the tied applicants proceed to a tie-breaker round, in accordance with Section 73.7003(c) of the Rules.³⁰ The first tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant.³¹ The applicant with the fewest attributable authorizations prevails. All of the ties between the applicants discussed in this Order were resolved based on the first tie-breaker criterion. Had there been cases in which the tie was not broken by this first factor, we also would have considered the number of radio station applications attributable to each applicant. Had that second factor failed to break the tie, we would have used mandatory timesharing as the tie-breaker of last resort.

III. COMPARATIVE ISSUES REQUIRING ADDITIONAL COMMISSION ANALYSIS

A. Preliminary Issues.

14. The textual discussion of individual cases in Section III of this Order is generally reserved for applications with omissions, errors, novel arguments, or which required consideration of rule waivers.³² Most applicants will find, therefore, that this Section does not contain individual references to

²⁸ See 47 C.F.R. § 73.7003(b)(3). The statewide network credit is an alternative for applicants that need multiple stations to serve large numbers of schools and, therefore, do not qualify for the local diversity of ownership credit.

²⁹ *Id.* § 73.7003(b)(4).

³⁰ *Id.* § 73.7003(c).

³¹ *Id.* § 73.7003(c)(1). Applicants are required to count all attributable full service commercial and NCE radio stations and certain FM translator stations. An applicant may exclude fill-in translators and any translator which the applicant seeks to replace with its full service proposal in this proceeding.

³² Matters of no consequence to our decision are not discussed or discussed only briefly. For example, a waiver request filed by Upper Columbia Media Association in Group 97091E is moot because the request concerned tie-breaker criteria, an issue not relevant to the disposition of that group. Similarly, where there was an obvious

their applications and qualifications. The first matter warranting discussion concerns several applicants that failed to file their point supplements by the established deadline of July 19, 2001, and subsequently sought waivers of the filing deadline or reconsideration of the dismissal of their applications. Absent a waiver, these applications cannot be included in a comparative analysis. Therefore, we consider this issue before conducting the comparative analyses.

15. **Groups 970823, 980415, and 990408.** In separate, but identical, letters submitted with point supplements on July 26, 2001, Mary V. Harris Foundation (“Harris”) requested waivers of the supplement deadline in three proceedings.³³ Counsel for Harris explains that Harris timely prepared the required supplements, which counsel brought to the Commission for filing on the July 19, 2001, deadline, along with many other documents. Counsel states that he inadvertently left Harris’ supplements in his briefcase because the supplements were underneath unrelated papers. Counsel states that he discovered the error on July 26, 2001, and submitted the supplements, along with the waiver requests, immediately. Harris asserts that acceptance of its supplements would not prejudice any other party and would serve the public interest. In particular, Harris argues that the one-week period between the filing deadline and its submissions was not long enough to delay processing. Harris also argues that the purpose of point supplements is to report qualifications as they existed on a snapshot date of June 4, 2001, and that those qualifications remain constant whether reported on July 19, or 26, 2001.

16. The Commission has stated that applications without timely point supplements will be dismissed.³⁴ The staff has dismissed other applications pursuant to this requirement.³⁵ Harris’s reliance on its counsel’s oversight cannot excuse its late filing. Applicants are responsible for errors by their attorneys.³⁶ We reject Harris’s argument that no one would be prejudiced by acceptance of its late-filed supplements. Consideration of late-filed supplements could potentially prejudice the comparative position of mutually exclusive applicants which timely filed supplements. Although we have not determined whether consideration of Harris’s late-filed supplements would have altered the outcome of any group, we observe that, whenever an additional applicant is included in a mutually exclusive group, there is the possibility that the additional applicant might prevail or that the additional applicant’s technical proposal might be sufficiently strong to alter the number of technical points for which another applicant would otherwise qualify. We are denying Harris’ waiver requests and dismissing its applications in Groups 970823, 980415, and 990408 for its failure to timely file point supplements.

17. **Group 980301.** On August 9, 2002, the staff issued a Public Notice dismissing 74 applications that had not been timely supplemented, including the application of Richland Center

discrepancy between two numbers reported by an applicant, and the discrepancy would not change the proceeding’s outcome, the Commission used the correct number in the Appendix without further discussion. For example, William Jewell College reported service gains by its modification proposal in Group 980704. However, it failed to exclude population already receiving service from its existing facility. The College subsequently reported the correct numbers in an engineering exhibit to the point supplement. *See* File No. BPED-19980717MA, as amended. No points would have been awarded for technical parameters based on either the original or corrected numbers. Therefore, we used the correct information in the Appendix and limit our discussion to this footnote.

³³ *See* Letters in Groups 970823, 980415, and 990408 from Counsel for Mary V. Harris Foundation to Secretary, FCC (July 26, 2001).

³⁴ *See NCE MO&O*, 16 FCC Rcd at 5083-85.

³⁵ *See, e.g., Noncommercial Educational FM and FM Translator Applications Dismissed for Failure to File Required Information*, Public Notice, 17 FCC Rcd 15706 (MB 2002) (“Dismissal Notice”).

³⁶ *See Belo Broadcasting Corp.*, Decision, 68 FCC 2d 1479 (1978).

Fellowship (“RCF”) for a permit to construct a new NCE station serving Richland Center, Wisconsin.³⁷ RCF filed a petition for reconsideration of that action on September 9, 2002. On October 22, 2002, RCF tendered a point supplement as an amendment to its dismissed application. The State of Wisconsin Educational Communications Board (“WECB”), the sole remaining applicant in Group 980310, opposed RCF’s filings. In denying reconsideration on December 14, 2004, the staff rejected RCF’s arguments that the supplement deadline was not adequately publicized, discriminated against religious broadcasters, and was unnecessary because the staff could have derived the same point information from applications even in the absence of a timely-filed supplement.³⁸ Concurrently, the staff returned RCF’s untimely point supplement. RCF filed an Application for Review on January 13, 2005. WECB filed an Opposition to which RCF filed a Reply.

18. RCF argues that the staff has enforced the supplement deadline too strictly, by failing to make exceptions for NCE applicants which, like itself, have “limited funds” and were not represented by counsel when the point system was adopted.³⁹ According to RCF, the staff could not reasonably have expected *pro se* NCE applicants, many of which are religiously affiliated, to know about Commission decisions absent receipt of a direct mailing from the Commission. Therefore, RCF contends that the notice of the supplement deadline that the staff gave to applicants was inadequate under the Administrative Procedure Act (“APA”) and disproportionately affected religious broadcasters.⁴⁰ RCF also argues that the staff erred in citing *American Family*⁴¹ for the proposition that the NCE procedures do not discriminate against religious broadcasters. RCF contends that the *American Family* court reached the issue of religious discrimination only with respect to individual point system factors, rather than with respect to RCF’s claim of inadequate notice.⁴² Finally, RCF challenges the staff’s statement that the staff could not have derived the missing point system information from material in RCF’s underlying application.⁴³

19. The Commission properly followed established practice to provide notice of the NCE comparative procedures, including the requirement to file timely supplements or face dismissal.⁴⁴ The Commission adopted the comparative procedures in a published decision, which was summarized in the *Federal Register*. The decision identified 1,356 NCE FM applications in 439 groups, including the RCF application in Group 980301, and established that all applicants in those groups were required to file a settlement or a supplement by “a date after release of the current decision that the staff will announce by public notice.”⁴⁵ The Commission warned that “Those filing neither will be dismissed.”⁴⁶ The staff, in

³⁷ See *Dismissal Notice*, 17 FCC Rcd at 15706.

³⁸ See Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau to Bruce A. Eisen, Esq., Counsel for Richland Center Fellowship (December 14, 2004) at 2-3.

³⁹ RCF Application for Review at 3. RCF has since retained counsel to file for reconsideration and review.

⁴⁰ RCF Application for Review at 4-6. See 5 U.S.C. § 558(c).

⁴¹ See *supra* n.4.

⁴² RCF Application for Review at 6-7.

⁴³ *Id.*

⁴⁴ See *NCE MO&O*, 16 FCC Rcd at 5107-08; *Supplement Filing Notice*, 16 FCC Rcd at 6893; *Supplement Extension Notice*, 16 FCC Rcd at 10892. In fact, the *Supplement Filing Notice* contained the following statement in bold-faced type: “**Those filing neither a settlement agreement nor a supplement claiming points by June 4, 2001 [extended to July 19, 2001, in the Supplement Extension Notice] will be dismissed.**” *Supplement Filing Notice*, 16 FCC Rcd at 6893 (emphasis in original).

⁴⁵ See *NCE MO&O*, 16 FCC Rcd at 5085, 5103 n.41, and Appendix.

compliance with this Commission directive, issued public notices establishing a snapshot date of June 4, 2001, and a settlement/supplement deadline of July 19, 2001.⁴⁷ The Commission referenced the staff's compliance with this directive in the *Federal Register* and in a subsequent decision in the NCE rulemaking docket.⁴⁸ Accordingly, an NCE applicant's failure to meet the deadline because it had not monitored Commission public notices is not an excuse for late-filing.⁴⁹ Moreover, the APA did not require the Commission to give personal notice to any of these applicants or to use a special notice standard based on an applicant's status as an NCE applicant, religious broadcaster, or *pro se* applicant.⁵⁰ The Appendix to this Order illustrates that numerous NCE applicants understood and complied with the requirement to file timely point supplements.⁵¹ RCF provides no support for its contention that the Commission's procedures discriminate against any group of applicants, and we reject its speculation in this regard.

20. The staff could not have, as RCF argues, derived required point information from the 1998 RCF application, filed prior to adoption of the point system. For example, RCF claims that the staff could have determined RCF's eligibility for diversity of ownership points from its disclosure in a 1998 application that it had no other attributable broadcast station interests.⁵² We disagree. Even assuming *arguendo* that the staff could infer from the 1998 submission that RCF had no other attributable stations in 2001, the staff could not have determined whether RCF had timely modified its governing documents to require the maintenance of this diversity. Thus, no points could have been awarded for this factor.⁵³ Finally, the Commission specifically warned applicants in the *NCE Order* that their applications "do not

⁴⁶ *Id.*

⁴⁷ *See supra* note 44.

⁴⁸ *See Reexamination of Comparative Standards for Noncommercial Educational Applicants*, Summary, 66 Fed. Reg. 29801 (June 1, 2001) ("The Commission announced in a document that it would require pending reserved channel noncommercial educational ('NCE') broadcast applicants in closed mutually exclusive groups to file point supplements or settlements by a 'supplement date' which would be announced by public notice. . . . On March 22, 2001, the Commission's Mass Media Bureau issued a public notice announcing a 'supplement date' of June 4, 2001. Affected applicants filing neither a settlement nor a supplement by June 4, 2001 [extended to July 19, 2001 by subsequent public notice] will be dismissed."); *NCE Reconsideration Order*, 17 FCC Rcd at 13140, n. 14.

⁴⁹ *See generally, Lakeshore Broadcasting, Inc. v. FCC*, 199 F.3d 468 (D.C. Cir. 1999) (upholding dismissal of applicant that did not meet hearing fee deadline announced by public notice); *Southern Communications, Inc.*, 12 FCC Rcd 1532, 1535 (WTB 1997) (applicant unaware of payment deadline set by public notice bears responsibility for failure to meet the deadline).

⁵⁰ *See generally National Black Media Coalition v. FCC*, 760 F.2d 1297, 1299 (D.C. Cir. 1985) (failure to receive personal notice would not excuse late-filed appeal because the FCC's public notice, not private notice, is the operative event for statutory deadline); *Millard V. Oakley*, 11 FCC Rcd 10225, 10229 (1996) (rejecting argument that commercial applicants received inadequate notice of deadline because noncommercial applicants were alerted earlier; APA was satisfied by notice to all applicants in Federal Register).

⁵¹ Many applicants alternatively filed timely settlement agreements, which have been approved by the staff. The filing of such settlements by the July 19, 2001, deadline is an additional confirmation that notice was sufficient and that those affected by the deadline understood its imperative.

⁵² RCF Application for Review at 7-8.

⁵³ RCF claimed that its original certifications demonstrated diversity, "including the fact that its governing documents require that diversity be maintained." Reply at 3. RCF's original application contained only the general certifications required at that time. The requirements and related certifications needed to receive diversity points were not adopted until well after RCF had filed its application.

... contain the information that the Commission will need to make a selection under the point system.”⁵⁴ The Commission hereby denies review and affirms the staff’s dismissal of the RCF application. We will direct the staff to process the sole remaining application in this group, filed by WECB, as a “singleton” filing.

B. Threshold Section 307(b) Issues.

21. As noted previously, the initial step in the NCE FM comparative process is a threshold Section 307(b) analysis, which is performed only if mutually exclusive NCE FM applicants propose to serve different communities and will provide a new first and/or second NCE aural service to a substantial population.⁵⁵ Most of the 76 groups require no textual discussion of Section 307(b) factors because all applicants within a group either proposed to serve the same community, certified that they are not eligible for Section 307(b) consideration, or would serve similarly-sized populations. We limit the Section 307(b) analysis herein to five groups in which our Section 307(b) study eliminates one or more applicants. In addition, we address the contention by an applicant in another group that it qualifies for a Section 307(b) preference under a standard different than that provided in the Rules. Information about Section 307(b), as applied to other cases, can be found *infra* in the individual case discussions in Section IV and the Appendix.

22. **Group 94123E.** In Group 94123E, three applicants proposed service to two different communities. Grassroots Broadcasting Company, Inc. (“Grassroots”) and Iowa State University of Science and Technology (“Iowa State”) would each serve Ottumwa, Iowa. American Family Association (“AFA”) would serve Fairfield, Iowa. Each applicant claimed that it was eligible for a fair distribution preference because each would provide a new first or second NCE service to ten percent of the population within its respective service area.⁵⁶ Iowa State would provide first NCE service to 57,427 people; Grassroots to 32,429 people; and AFA to 2,366 people.⁵⁷ AFA is eliminated because each of the applications proposing a new Ottumwa station is entitled to a Section 307(b) preference with respect to AFA’s Fairfield proposal (*i.e.*, each Ottumwa proposal would serve 5,000 people more than the Fairfield proposal). At this point, the 307(b) analysis ends, because the two remaining applicants both would serve Ottumwa.⁵⁸ Accordingly, those two, Grassroots and Iowa State, will proceed to a point hearing.

23. **Group 961010.** In the next group, four applicants proposed to serve three different communities in Oklahoma. The Love Station, Inc. (“Love”) and Community Broadcasting, Inc. (“CBI”)

⁵⁴ *NCE Order*, 15 FCC Rcd at 7424.

⁵⁵ *See supra* ¶ 6.

⁵⁶ Grassroots’ 60 dBu contour encompasses 32,429 people, to all of whom Grassroots would provide with a new first or second NCE service; *See* Grassroots’ Point Supplement, Questions III(1), III(2), and associated exhibits. Iowa State’s encompasses 70,719 people, to all of whom Iowa State would provide with such service; *See* Iowa State’s Point Supplement, Questions III(1), III(2), and associated exhibits. AFA’s encompasses 13,412 people, 12,918 to whom AFA would provide such service. *See* AFA’s Point Supplement, Questions III(1), III(2), and associated exhibits. 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.

⁵⁷ Point Supplements of Iowa State, Grassroots, and AFA, Question III(1).

⁵⁸ *See* 47 C.F.R. § 73.7002(a). *See also Supplement Extension Notice*, 16 FCC Rcd at 10895, Example 6 (illustrating the principle that two equivalent applicants specifying the same community proceed to a point system following elimination of third applicant specifying a second community); *NCE Reconsideration Order*, 17 FCC Rcd at 13132 n.4 (examples in the Bureau’s Public Notice are illustrative of how NCE Section 307(b) issues will be resolved).

both proposed to serve Piedmont. Educational Media Foundation (“EMF”) would serve Yukon, and AFA would serve El Reno. Each applicant claimed that it would provide a new first or second NCE service to ten percent of the population, and to at least 2,000 people, within its respective service area and, therefore, that it is eligible for a fair distribution preference.⁵⁹ Love, EMF, and AFA each asserted that it was entitled to a first service preference because its proposed facility would provide first NCE service to at least ten percent of the population (and at least 2,000 persons) within its respective 60 dBu contour. CBI did not assert that it is entitled to a first service preference and, thus, is eliminated based on first service.⁶⁰ First service is not dispositive with respect to the remaining applicants. Love would provide first NCE service to 18,710 people; AFA to 18,680 people; and EMF to 17,498 people.⁶¹ Thus, none proposed to serve at least 5,000 more potential listeners than the next highest applicant’s first service total. If no proposal prevails on first service, we consider combined first and second NCE service population totals. Love would provide a new first or second NCE service to 34,919 people (18,710 first service plus 16,209 second service); EMF to 34,082 people (17,498 first service plus 16,584 second service); and AFA to 35,879 people (18,680 first service plus 17,199 second service).⁶² Because no applicant proposes to serve at least 5,000 more people than the next best applicant, Love, EMF, and AFA must proceed to a point hearing.

24. **Group 980616.** This group consists of six applicants proposing to serve four different communities in Florida. Christian Educational Association (“CEA”) proposed to serve “Favorita.”⁶³ Daystar Public Radio, Inc. (“Daystar”) and Pathway Public Radio (“Pathway”) proposed to serve Favoretta. Good Idea, Inc. (“Good”) and Community Public Radio (“CPR”) would serve Beverly Beach. Central Florida Educational Foundation (“Central”) would serve Palm Coast. Each applicant claimed that it would provide a new first or second service to ten percent of the population, and to at least 2,000 people, within its respective service area and, therefore, that it was eligible for a fair distribution preference.⁶⁴ It appears that CEA erred in preparing its analysis. CEA based its certification on the total

⁵⁹ Love’s 60 dBu contour encompasses 158,850 people. Love’s claimed aggregated first and second NCE service is 34,919 people. See Love’s Point Supplement, Questions III(1), III(2), and associated exhibits. EMF’s 60 dBu contour encompasses 105,383 people. EMF’s claimed aggregated first and second NCE service is 34,082 people. See EMF’s Point Supplement, Questions III(1), III(2), and associated exhibits. CBI’s 60 dBu contour encompasses 139,859 people. CBI’s claimed aggregated first and second NCE service is 33,616 people. See CBI’s Point Supplement, Questions III(1), III(2), and associated exhibits. AFA’s 60 dBu contour encompasses 150,078 people. AFA’s claimed aggregated first and second NCE service is 35,879 people. See AFA’s Point Supplement, Questions III(1), III(2), and associated exhibits.

⁶⁰ CBI stated that it would provide a first NCE service to 3,476 of the 139,859 people within its 60 dBu contour, *i.e.*, to less than ten percent of its total service population. See CBI’s Point Supplement, Question III(1). Accordingly, Love, rather than CBI, will represent the community of Piedmont in our Section 307(b) analysis.

⁶¹ See Point Supplements of Love, AFA, and EMF, Question III(1).

⁶² *Id.* at Questions III(1) and (2).

⁶³ We believe that this may be a misspelled reference to Favoretta, Florida. The Florida Department of Education lists Favoretta as a community in Flagler County. See www.firn.edu/doe/eias/flmove/city.htm. “Favorita” is not listed.

⁶⁴ CEA’s 60 dBu contour encompasses 28,446 people. CEA’s claimed aggregated first and second NCE service is 28,446 people. See CEA’s Point Supplement, Questions III(1), III(2), and associated exhibits. Daystar’s 60 dBu contour encompasses 51,770 people. Daystar’s claimed aggregated first and second NCE service is 42,509 people. See Daystar’s Point Supplement, Questions III(1), III(2), and associated exhibits. Good’s 60 dBu contour encompasses 44,142 people. Good’s claimed aggregated first and second NCE service is 34,735 people. See Good’s Point Supplement, Questions III(1), III(2), and associated exhibits. Pathway’s 60 dBu contour encompasses 41,133 people. Pathway’s claimed aggregated first and second NCE service is 31,881 people. See Pathway’s Point Supplement, Questions III(1), III(2), and associated exhibits. CPR’s 60 dBu contour encompasses 36,450 people.

population within its 60 dBU contour without regard to whether portions of that population receive service from other NCE stations.⁶⁵ We will not include CEA in the fair distribution analysis because its claimed numbers appear significantly inaccurate.⁶⁶ CEA is thus eliminated.

25. Daystar, Good, Pathway, and Central each asserted that it was entitled to a first NCE service preference because its proposed facility would provide first service to at least 10 percent of the population (and at least 2,000 persons) within its respective 60 dBU contour. Unlike those four applicants, CPR did not assert that it is entitled to a preference based solely on first service, and thus, is eliminated based on first service. Daystar would provide first NCE service to 31,838 people; Central to 30,725 people; Good to 23,915 people; and Pathway to 21,201 people.⁶⁷ Daystar and Central's first service proposals are comparable. Good and Pathway are eliminated because they each propose to provide first service to at least 5,000 fewer potential listeners than Central. If no single proposal prevails on first service, we consider the combined first and second NCE service population totals of the remaining applicants. Daystar would provide a new first or second NCE service to 42,509 people (31,838 first service plus 10,671 second service); and Central to 41,300 people (30,725 first service plus 10,575 second service).⁶⁸ Because neither applicant proposes to so serve at least 5,000 more people than the other, Daystar and Central must proceed to a point hearing.

26. **Group 990306.** In the next group, San Juan College ("SJC") and KUTE, Inc. ("KUTE") each proposed new stations to serve Durango, Colorado. North Fork Valley Public Radio ("North Fork") proposed to modify the facilities of KVMF(FM), Montrose, Colorado. North Fork and KUTE each claimed that it would provide a new first or second NCE service to ten percent of the population, and to at least 2,000 people, within its respective service area and, therefore, that it was eligible for a fair distribution preference.⁶⁹ SJC certified that it would not qualify for a Section 307(b) preference because

CPR's claimed aggregated first and second NCE service is 29,281 people. *See* CPR's Point Supplement, Questions III(1), III(2), and associated exhibits. Central's 60 dBU contour encompasses 48,920 people. Central's claimed aggregated first and second NCE service is 41,300 people. *See* Central's Point Supplement, Questions III(1), III(2), and associated exhibits.

⁶⁵ CEA's claim that all 28,446 people within its 60 dBU contour receive a first NCE service is supported by an exhibit identifying the ethnicity of the population but silent as to whether other NCE stations serve the area. *See* CEA Application, Exhibit 3. Information presented by mutually exclusive applicants in their own analyses indicates that several NCE stations are authorized in the vicinity. *See, e.g.,* Central Application, Exhibit 4A; Daystar Application, Exhibit E-1. The Commission thus ran an engineering study of existing stations which overlap CEA's proposal. We determined that a substantial portion of CEA's 60 dBU contour is covered by the signals of licensed NCE stations WAPN(FM), and WEAZ(FM), both Holly Hill, Florida, and WJLH(FM), Flagler Beach, Florida. CEA's certification cannot be credited because it ignores first, second, or third NCE service that its potential listeners already receive.

⁶⁶ Even had we accepted CEA's claimed first NCE service numbers, CEA would have been eliminated in a comparison of its aggregated first and second service numbers because other applicants propose to serve at least 5,000 more potential listeners than CEA.

⁶⁷ *See* Daystar, Central, Good, and Pathways's Point Supplements, Question III(1) and associated exhibits.

⁶⁸ *See* Daystar and Central's Point Supplements, Questions III(1), III(2), and associated exhibits.

⁶⁹ Modification applicants such as North Fork report only data relating to the gained service population and exclude any population within the station's existing service area. The new area within North Fork's proposed 60 dBU contour encompasses 7,045 people. North Fork's claimed aggregated first and second new NCE service is 6,505 people. *See* North Fork's Point Supplement, Questions III(1), III(2), and associated exhibits. Applicants for new stations, such as KUTE, base their Section 307(b) claims on the entire 60 dBU contour because all of that area represents new service. KUTE's 60 dBU contour encompasses 27,431 people; its claimed aggregated first and

it would not provide a new first or second NCE service to ten percent of the population, and to at least 2,000 people. SJC is thus eliminated on fair distribution principles. Neither remaining applicant asserted that it is entitled to a first NCE service preference. If no proposal prevails on first service, we consider combined first and second NCE service population totals. KUTE would provide a first or second NCE service to 8,956 people (no first service plus 8,956 second service); and North Fork to 6,505 people (61 first service plus 6,444 second service).⁷⁰ Because neither the KUTE nor North Fork proposal would provide new service to 5,000 people more than the other, both must proceed to a point hearing.

27. **Group 990508.** In Group 990508, Educational Media Foundation (“EMF”) and Youngshine Media, Inc. (“Youngshine”) both proposed to serve Hopatcong, New Jersey. CSN International (“CSN”) proposed to serve Lake Hopatcong, New Jersey, a similarly-named, but different, community. Each applicant claimed that it would provide a new first or second service to ten percent of the population, and to at least 2,000 people, within its respective service area and, therefore, that it was eligible for a fair distribution preference.⁷¹ Each applicant asserted that it was entitled to a first service preference because its proposed facility would provide first service to at least ten percent of the population (and at least 2,000 persons) within its respective 60 dBu contour. CSN would provide first NCE service to 31,634 people; EMF to 33,629 people; and Youngshine to 29,675 people.⁷² No applicant proposed to serve at least 5,000 more potential listeners than the next highest applicant’s first service total. If no proposal prevails on first service, we consider combined first and second service population totals. CSN would provide a new first or second NCE service to 160,713 people (31,634 first service plus 129,079 second service); EMF to 151,673 people (33,629 first service plus 118,044 second service); and Youngshine to 158,712 people (29,675 first service plus 129,037 second service).⁷³ EMF’s proposal would provide a new first or second NCE service to 5,000 fewer listeners than CSN’s proposal for a different community, and also 5,000 fewer listeners than Youngshine’s proposal for the same community. Accordingly, EMF is eliminated on fair distribution principles. Neither Youngshine nor CSN proposes to serve 5,000 people more than the other, and must, therefore, proceed to a point hearing.

28. **Group 980510.** Central Florida Educational Foundation, Inc. (“Central”), CSN International (“CSN”), and Florida Public Radio, Inc. (“FPR”) proposed service to two different communities in Group 980510. All three applicants acknowledged that they would not provide a new first or second NCE service to ten percent of their population, but only two conceded that they do not qualify for a Section 307(b) preference.⁷⁴ The third applicant, Central, argued that its proposal presented an “odd” and “anomalous” situation that warrants award of a fair distribution preference. Specifically, Central argued that its aggregated first and second NCE service to almost 25,000 people (9.33 percent of the population) was relatively close to the ten percent benchmark, far exceeded the established 2,000

second NCE service is 8,956 people. See KUTE’s Point Supplement, Questions III(1), III(2), and associated exhibits.

⁷⁰ See North Fork and KUTE’s Point Supplements, Questions III(1), III(2), and associated exhibits.

⁷¹ See CSN, EMF, and Youngshine’s Point Supplements, Questions III(1), III(2), and associated exhibits. CSN’s 60 dBu contour encompasses 187,253 people. CSN’s claimed aggregated first and second NCE service is 160,713 people. EMF’s 60 dBu contour encompasses 164,723 people. EMF’s claimed aggregated first and second NCE service is 151,673 people. Youngshine’s 60 dBu contour encompasses 179,583 people. Youngshine’s claimed aggregated first and second NCE service is 158,712 people.

⁷² See CSN, EMF, and Youngshine’s Point Supplements, Question III(1).

⁷³ *Id.* at Questions III(1) and (2).

⁷⁴ See CSN and FPR Point Supplements, Questions III(1) and III(2); Central’s Point Supplement, Questions III(1), III(2) and associated exhibits.

person minimum, and would serve a population and area much larger than that proposed by the other applicants.⁷⁵

29. We reject Central's Section 307(b) claim. Central would not provide first or second NCE service to at least ten percent of the population -- the minimum benchmark to qualify for a threshold Section 307(b) preference. Nor does it demonstrate good cause for waiver of the benchmark. Central's argument that it would serve a larger area than the other applicants is immaterial. The relative sizes of service contours are not compared in a Section 307(b) study.⁷⁶ Such comparisons are part of the technical parameters analysis of the point system (which is conducted only when no applicant is entitled to a decisive Section 307(b) preference).⁷⁷

30. Central's argument that its first and second NCE service population exceeds 2,000, similarly reflects a misunderstanding of the NCE Section 307(b) eligibility standard, which consists of two components: a 10 percent threshold and the 2,000 person minimum. These two components work in tandem to make the standard meaningful regardless of community size. In well-populated service areas such as Central's, the ten percent component ensures that Section 307(b) eligibility is limited to NCE applicants offering new service to a significant portion of the relatively large population.⁷⁸ In contrast, the 2,000 person component is designed for small communities to ensure that trivial service differences are not treated as dispositive. It would be neither "odd" nor "anomalous" for an applicant in a populated area to propose first and second service to a population well in excess of 2,000 yet fail to qualify for a Section 307(b) preference because it falls short of the ten percent benchmark. Because none of the applicants in Group 980510 qualifies for a Section 307(b) preference, all will proceed to a point system analysis.

C. Established Local Applicant Issues.

31. As discussed previously, 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, and government entities within their jurisdictions, are considered "local."⁷⁹ Applicants that were local for at least the 24 months immediately preceding the snapshot date, implemented safeguards to maintain such localism, placed supporting documents in their local public inspection files, and also submitted that documentation to the Commission receive three points as "established local" entities.⁸⁰ The weight accorded this criterion reflects the importance of localism to NCE broadcasting. The Commission purposefully adopted a narrow definition of "established local" entities to increase the likelihood that organizations most knowledgeable, responsive, and accountable to their local community would be awarded licenses, to keep localism points meaningful, and to avoid possible abuses.⁸¹ Several applicants in this proceeding seek to expand the types of organizations that should be treated as established local

⁷⁵ Central alleged that the population it would provide with a second NCE service exceeded that receiving any service from the other two applicants by 73.3 percent to 114.4 percent, respectively. *See* Central Point Supplement, Exhibit 1. It also claimed that it would cover an area 13 to 65 times larger than that of any other applicant. *Id.*

⁷⁶ *See* 47 C.F.R. § 73.7002(b).

⁷⁷ *Id.* 47 C.F.R. § 73.7003(b)(4).

⁷⁸ *See NCE Order*, 15 FCC Rcd at 7396 (rejecting 5 percent figure as inadequate).

⁷⁹ *See supra* ¶ 8.

⁸⁰ *See* 47 C.F.R. § 73.7003(b)(1).

⁸¹ *See NCE MO&O* at 5091.

entities. As discussed below, the Commission has determined that these applicants do not qualify for points under this criterion and has adjusted their point totals accordingly.

32. **Group 880611.** Group 880611 consists of two applicants for a construction permit at Redding, California. The Research Foundation, California State University at Chico (the “Foundation”) and the State of Oregon Acting by and Through the State Board of Higher Education for the Benefit of Southern Oregon University (“Oregon”) each described its activities in Redding and certified that it qualified for points as an established local applicant. The bases for the Foundation and Oregon’s claims to be established local applicants are similar to those we have rejected in the context of an application to construct an NCE station in Bristol, Virginia.⁸² Upon review of the arguments and underlying support in the present proceeding, we find that neither the Foundation nor Oregon is entitled to such points.

33. *The Foundation.* The Foundation stated that it was incorporated in 1940 as an auxiliary organization of California State University, Chico (“CSUC”). According to the Foundation, its purpose is to develop and administer activities that aid and supplement the educational mission of CSUC. Foundation stated that it operates in twelve counties, including Shasta County, in which Redding is located.⁸³ The Foundation further reported that it has provided an educational broadcast service to Redding continuously since 1980. Specifically it operated an FM translator station, replaced the translator with KFPR(FM), and has operated KFPR(FM) with program test authority, subject to the outcome of this proceeding.⁸⁴ The Foundation also stated that it has maintained an office and studio in Redding since the mid-1980’s and offered continuing education classes at the Shasta County Schools Office and at Shasta College in Redding. Based on these contacts with Redding, the Foundation certified that, for a period of at least two years prior to the snapshot date, it existed as an educational institution or organization and has been physically headquartered, has had a campus, or has had 75 percent of its board members residing within 25 miles of the coordinates of Redding, California.⁸⁵ It also certified that it had placed documentation supporting its certification in a local public file, which documentation it had submitted to the Commission.

34. Although the Foundation demonstrated many activities in and contacts with Redding and Shasta County, it has not shown that it is an established local applicant, as defined in Section 73.7000 of the Rules.⁸⁶ For purposes of that Rule, a corporation generally establishes its local credentials through the location of its headquarters or the residences of its board members.⁸⁷ The record reflects that the

⁸² See *American Family Ass’n et al.*, Memorandum Opinion and Order, FCC 06-176, __ FCC Rcd __ (rel. Dec. 14, 2006).

⁸³ See the Foundation’s Point Supplement, Question IV(1) and associated exhibits.

⁸⁴ *Id.* This proceeding has a long history. The staff originally dismissed Oregon’s application as untimely, and granted the Foundation’s construction permit application as a “singleton.” The Foundation constructed KFPR(FM), Redding, California, began operating pursuant to program test authority, and filed a license application. The staff granted the Foundation’s license application on March 28, 1996, but rescinded the grant and returned the application to pending status shortly thereafter, because Oregon had appealed the dismissal of its mutually exclusive application. See File No. BLED-19931123KD. The United States Court of Appeals for the District of Columbia vacated the dismissal of Oregon’s application and remanded the matter to the Commission. See *State of Oregon v. FCC*, 102 F.3d 583 (D.C. Cir. 1996) (vacating *State of Oregon*, Memorandum Opinion and Order, 11 FCC Rcd 1843 (1996)). On remand, the staff accepted Oregon’s application for filing.

⁸⁵ See the Foundation’s Point Supplement, Question IV(1).

⁸⁶ See 47 C.F.R. § 73.7000.

⁸⁷ *Id.*

Foundation is a corporation headquartered in Chico, California, well beyond 25 miles from Redding. The Foundation's facilities in Redding are functionally similar to a branch office and are insufficient to confer established local applicant status.⁸⁸ The Foundation did not allege that its governing board is local to Redding. It cannot establish localism through the classes offered at Shasta College and Shasta County Schools in Redding because the Foundation is not an educational institution with campuses.⁸⁹ The campuses at issue appear to belong to other institutions. The Foundation showed that it furthers the educational mission of a college operated by the state government, but not that the Foundation itself is a government entity. Accordingly, the Foundation cannot be considered local throughout the government's area of jurisdiction. The Commission appreciates the centrality of CSUC to the Foundation's mission. Even accepting *arguendo*, however, that CSUC could have received points in its own right, CSUC is not the applicant in the present proceeding. Because the Foundation has not shown that it is "local" to Redding, we need not consider whether it is "established."⁹⁰ The Foundation will not receive any points under this criterion.

35. *Oregon*. Oregon contended that it should receive points as an established local applicant because Jefferson Public Radio ("JPR"), has been headquartered in Redding, California, since 1994. Oregon's application described JPR as "its Southern Oregon University radio network," and as "the State of Oregon's educational radio network."⁹¹ Oregon further stated that JPR's headquarters contain studios from which JPR broadcasts approximately 35 hours of programming a week, including California news and coverage of California issues. It further stated that JPR intended to maintain its headquarters in Redding, and has purchased and renovated a historic theater in downtown Redding.⁹² Based on its relationship with JPR and JPR's Redding "headquarters," Oregon certified that, for a period of at least two years prior to the snapshot date, it had existed as an educational institution or organization and had been physically headquartered, had a campus, or had 75 percent of its board members residing within 25 miles of the coordinates of Redding, California. It also certified that it has placed documentation supporting its certification in a local public file and had submitted that documentation to the Commission.⁹³

36. We reject Oregon's claim that it is local to Redding, California, through JPR. Oregon, an instrumentality of the Oregon state government, could demonstrate that it meets the definition of local applicant in several ways. A state government has jurisdiction throughout its own state, and therefore is considered a local applicant anywhere within its state's borders.⁹⁴ The community at issue here -- Redding -- is located in California, not Oregon. A state also might establish itself as local in a nearby, but

⁸⁸ See *NCE Order*, 15 FCC Rcd at 7409.

⁸⁹ The established local applicant requirements are phrased in terms of the basic characteristics of the applicant, not the relationships that the applicant or its members may have with other organizations. See 47 C.F.R. §§ 73.7000, 73.7003(b)(1). When an applicant's coordinated activities with other entities would be sufficient to qualify for a specific type of NCE points, the rules set forth the pertinent requirements. See, e.g., 47 C.F.R. § 73.7003(b)(3) (iii) (organization without direct authority over schools can qualify as a statewide network if it regularly provides broadcast programming for use in the curriculum of other entities with authority over schools).

⁹⁰ For example, the Foundation's long-time operation of a translator and of KFPR(FM) is immaterial because such operations, for whatever amount of time, could not transform a non-local entity into a local one.

⁹¹ See Oregon's Point Supplement, Exhibit E-3 at 1, and Exhibit to Question IV(3).

⁹² See Oregon's Point Supplement, Exhibit E-3 at 1-2.

⁹³ See Oregon's Point Supplement at Question IV(1).

⁹⁴ See 47 C.F.R. § 73.7000.

out-of-state community by showing that it operates a state university campus within 25 miles of the out-of-state community.⁹⁵ Redding, California, is well beyond 25 miles from the Oregon/California border and, thus, more than 25 miles from any state university under Oregon's jurisdiction.⁹⁶ The concept of "headquarters" is not one that the Commission anticipated applying to state governments. It would ordinarily make little sense for a state to rely on the proximity of its headquarters (*i.e.*, the state capital) to its proposed community of license; the state could be considered local in a larger area under other definitions. Even assuming *arguendo* that the concept of "headquarters" is relevant, Oregon's headquarters would not be that of JPR in Redding, California, as claimed. Rather, we would consider Oregon's headquarters to be its capital, Salem, Oregon – which is hundreds of miles from Redding. An applicant is generally considered to have only one headquarters.⁹⁷ A facility that Oregon operates in California would be comparable to a branch office. As discussed previously, branch offices are insufficient to establish local applicant credentials.⁹⁸ The Commission has rejected proposals, including the one advanced by Oregon, to expand the definition of local applicant, and the U.S. Court of Appeals has upheld the Commission's action.⁹⁹

37. **Group 95031E.** The applicants in this group each proposed a new station in Redding, California, as in Group 880611. Oregon is a participant in both groups and raised the same localism claim in each proceeding. For the reasons stated above in Group 880611, we reject Oregon's claim to be local to Redding in Group 95031E.

38. **Groups 97091E and 990109.** Upper Columbia Media Association ("UCMA") filed an application in Group 97091E to serve Clarkston, Washington, and an application in Group 990109 to serve West Clarkston, Washington. UCMA stated that it is a subsidiary of the Upper Columbia Corporation of Seventh-day Adventists ("UCCSA"). UCMA did not claim to be an established local entity in its own right with respect to the proposed communities of Clarkston or West Clarkston. Rather, it argued eligibility for localism points through its parent, UCCSA, which it claims to have, for more than two years, owned and operated the Beacon Seventh Day Adventist School in Lewiston, Idaho, within 25 miles of both Clarkston and West Clarkston.¹⁰⁰ UCMA certified that, for a period of at least two years prior to the snapshot date, UCCSA has existed as an educational institution or organization and has been physically headquartered, has had a campus, or has had 75 percent of its board members residing within 25 miles of the coordinates of Clarkston and West Clarkston, Washington. It also certified that it had placed documentation supporting its certification in a local public inspection file, and also had submitted that documentation to the Commission.¹⁰¹

39. We find that UCMA does not qualify for points as an established local applicant, as defined by the Rules, and will receive no points under this criterion. UCMA is a corporation located in the distant community of Spokane, Washington. Information available from the Washington Secretary of State's

⁹⁵ *Id.*

⁹⁶ Oregon's reciprocal arrangements with colleges under the jurisdiction of the state of California do not bring those colleges under the jurisdiction of Oregon for purposes of localism. *See supra* n. 89.

⁹⁷ *See NCE Order*, 15 FCC Rcd at 7410 (a headquarters is the applicant's "primary" place of business).

⁹⁸ *See supra* ¶ 34.

⁹⁹ *See NCE MO&O*, 16 FCC Rcd at 5091-93. *American Family*, 365 F.3d at 1164.

¹⁰⁰ *See UCM's Point Supplements*, Question IV(1) and associated exhibits.

¹⁰¹ *See UCM's Point Supplements*, Question IV(1).

Office establishes that UCMA and UCCSA are two separate corporate entities.¹⁰² The Commission recognizes that USCCA exercises control over UCMA. However, these are distinct corporations which can have very different functions and purposes, notwithstanding the parent-subsidiary relationship. We will not impute the localism qualifications of one corporation to a separately organized, non-local corporation. Even if we assume that the parent could have received points in its own right, the parent is not the applicant in the present proceeding.

40. **Group 980415.** Pioneer Public Broadcasting Company, Inc. (“PPBC”) certified that for a period of at least two years prior to the snapshot date, it has existed as an educational institution or organization and has been physically headquartered, has had a campus, or has had 75 percent of its board members residing within 25 miles of the coordinates of Fargo, North Dakota. It also certified that it has placed documentation supporting its certification in a local public inspection file and has submitted that documentation to the Commission.¹⁰³ Upon examining that documentation, however, we conclude that PPBC’s certification is without basis. The application was originally filed in 1998 by an unincorporated organization named Pioneer Public Broadcasting Company (“Pioneer Company”).¹⁰⁴ On July 19, 2001, the application was amended to reflect that a new corporation, formed on May 31, 2001, had become the applicant.¹⁰⁵ The point supplement was submitted on behalf of PPBC, the applicant as of the snapshot date. PPBC, however, could not have met the definition of “established” on that date because it was a new legal entity that had existed for about one week.¹⁰⁶ In a similar context, we have declined to “look through” a corporation to its directors to satisfy the two-year requirement for established entities.¹⁰⁷ PPBC will not receive any points as an established local applicant.¹⁰⁸

D. Diversity of Ownership Issues.

41. As discussed above, two points are awarded for local diversity of ownership if the principal community contours of the applicant’s proposed station and any other station in which any party to the application has an attributable interest do not overlap, and the applicant’s governing documents require that such diversity be maintained.

42. **Group 970738.** Denver Educational Broadcasting, Inc. (“DEB”) claimed no points for diversity of ownership in its original point supplement filed in July 2001. On July 16, 2004, however, it filed an amendment stating that it qualified for two points for diversity of ownership based on a July 13,

¹⁰² See www.secstate.wa.gov/corps. The Secretary of State assigned unified business identifier number 601489051 to UCM; 601812490 to UCCSA .

¹⁰³ See PPBC’s Point Supplement, Question IV(1).

¹⁰⁴ See File No. BPED-19980427MQ.

¹⁰⁵ See PPBC’s Point Supplement, Attachment 1. The directors of PPBC are Pioneer Company’s sole director and principal, and one other individual. See File No. BPED-19980247MQ, page 3 as amended. Because this ownership change does not exceed 50 percent, the filing may be treated as a minor amendment. See 47 C.F.R. § 73.3573.

¹⁰⁶ See 47 C.F.R. § 73.7000.

¹⁰⁷ See *NCE Reconsideration Order*, 17 FCC Rcd at 13137-38 (denying proposal that a local corporation in existence for less than two years nevertheless be considered “established” if its directors lived in the community over two years). See also *NCE MO&O*, 16 FCC Rcd at 5085 (an applicant cannot claim points as an established local applicant based on changes that occurred less than two years before the snapshot date).

¹⁰⁸ We observe that, had we accepted PPBC’s certification, there would have been a tie, which preliminary tie-breakers would not have resolved. The proceeding thus would have resulted in a time-sharing arrangement.

2004, amendment to its bylaws.¹⁰⁹ According to DEB, it learned from new counsel that its original submission was mistaken and it wished to correct its “error.” DEB stated that it should have claimed points for diversity of ownership in its original point supplement because the principal community contour of its proposed station would not overlap that of any other radio station in which any party to the application has an attributable interest.¹¹⁰ However, to receive points for diversity of ownership, the governing documents of the applicant entity must have included a requirement to establish this diversity by the snapshot date of June 4, 2001. DEB maintained that the Commission should find good cause to accept the application amendment or, alternatively, to waive the July 19, 2001, deadline for filing point supplements.¹¹¹

43. We disagree. As the Commission has stated, NCE applicants cannot amend their applications after the supplement date of July 19, 2001, except for good cause.¹¹² Thereafter, applicants must update their submissions pursuant to Section 1.65 of the Rules to report changes for which they would lose points. However, to promote fairness and transparency in this comparative process, we do not permit an applicant to benefit from any changes in circumstances after the snapshot date.¹¹³ Accordingly, DEB’s 2004 amendment is unacceptable for comparative purposes both because it was filed after July 19, 2001, and because it relies on changes that the applicant made to its governing documents after the snapshot date of June 4, 2001. Thus, DEB will receive no points for diversity of ownership.¹¹⁴

44. **Group 990512.** The Talking Information Center (“TIC”) claimed points for diversity of ownership in Group 990512. TIC certified that the principal community contour of its proposed Marshfield, Massachusetts, station would not overlap that of any other radio station in which any party to the application has an attributable interest, that its governing documents require that such diversity be maintained, that it has placed documentation of this diversity in its local public inspection file, and that it has submitted copies of this documentation to the Commission.¹¹⁵ TIC disclosed that its certification excludes the interests of TIC board member and officer Edward F. Perry, Jr. (“Perry”), who is also sole principal of the licensee of WATD-FM, Marshfield, Massachusetts. TIC maintained that such exclusion is appropriate because Perry has agreed to resign his positions at TIC if the TIC application is granted. Perry further stated in a May 30, 2001, letter submitted with the TIC point supplement that “Should the Commission’s policies require an earlier resignation to ensure diversity, my resignation from both [TIC] posts should be considered as effective immediately.”¹¹⁶

¹⁰⁹ See File No. BPED-19980123MO, Question IV(2)(a) as amended, Exhibit 1, and Attachment 1.

¹¹⁰ *Id.* at Exhibit 1.

¹¹¹ *Id.*

¹¹² See *NCE MO&O*, 16 FCC Rcd at 5085-86.

¹¹³ *Id.* at 5086. See also *Supplement Filing Notice*, 16 FCC Rcd at 6894; *Section 1.65 Notice*, 19 FCC Rcd at 24740.

¹¹⁴ In this same group, Public Broadcasting of Colorado, Inc. (“PBC”) filed an amendment to substitute 2000 census data for its technical parameter showing, which was based on 1990 census data. PBC alleged that the 2000 census data was unavailable previously. We need not address this request because PBC’s proposed amendment would not change the outcome of this proceeding. No applicant in Group 970738 would qualify for points for technical parameters regardless of the census data that is used. In this group, no applicant proposed to serve ten percent more area than any other applicant. See PBC and DEB’s Point Supplements, Question IV(4).

¹¹⁵ See TIC’s Point Supplement, Question IV(2)(a).

¹¹⁶ Letter from Edward F. Perry, Jr. to Ron Bersani, Executive Director, TIC (May 30, 2001), submitted in TIC Point Supplement, Exhibit 2.

45. As discussed *supra*, the Commission examines the applicants' qualifications for points as of the June 4, 2001, snapshot date.¹¹⁷ Actions that would enhance an applicant's points, even if initiated prior to the snapshot date, will not qualify for points unless those actions have also been completed by that time.¹¹⁸ Thus, TIC could exclude attributable interests of a board member only if those attributable interests or the board member's position at TIC ceased on a permanent basis before the snapshot date. Perry tendered his resignation prior to that date. He offered to resign either upon Commission grant of TIC's application or earlier. TIC did not accept Perry's offer of immediate resignation; it accepted his resignation conditioned on a possible future action, *i.e.*, the Commission's grant of its application. TIC's submissions indicate that, a month after the snapshot date, Perry retained his attributable positions at TIC and at a station licensed to the same community.¹¹⁹ Accordingly, because Perry's radio interests were attributable to TIC on the snapshot date, TIC is not entitled to points for diversity of ownership.

46. **Group 981003.** As discussed *supra*, an applicant that has an attributable interest in an FM translator whose principal community service contour would overlap that of its full service NCE FM proposal may exclude the translator for diversity of ownership purposes under certain circumstances.¹²⁰ For non-fill-in translators, the applicant must certify that it will request cancellation of the translator authorization upon commencing operations of the full service NCE station.¹²¹ Henderson State University ("HSU") in Group 981003, requested a similar exclusion for its Class D station. HSU certified that it would qualify for two points for diversity of ownership because it has pledged to divest or terminate operation of Class D station KSWH-FM, Arkadelphia, Arkansas, on Channel 216 if awarded a permit to construct a full service Arkadelphia NCE station on Channel 220.

47. The Rules governing diversity points and attribution do not contain any provision excluding Class D FM stations on the basis of a divestiture pledge. Accordingly, we will consider HSU's request as one for a rule waiver, which we believe is warranted. HSU has proposed to substantially enhance service by substituting one facility for another, the goal of the exclusion rule.¹²² As is also the case with FM translators under this Rule, HSU is proposing to surrender a secondary service authorization for a full service authorization.¹²³ Finally, a waiver would promote the Commission's long-term policy to migrate Class D stations to full service facilities.¹²⁴ Accordingly, we conclude that good cause exists and waive the Rule and award points for diversity of ownership to HSU.

¹¹⁷ See *supra* ¶ 3.

¹¹⁸ See *NCE MO&O*, 16 FCC Rcd at 5109, n.24 ("Applicants may not enhance their position based on matters that require additional Commission or applicant action. For example, they must consider as pending any applications for which their requests for withdrawal are conditioned on our approval of a settlement agreement. Similarly, they must include as existing authorizations any station for which an assignment of license has not yet been consummated, even if an application to assign has been filed or approved.")

¹¹⁹ TIC Point Supplement, Exhibit 2 (July 17, 2001) ("[Perry] has remained on the Board of Directors and currently serves as Treasurer of [TIC]. Although Mr. Perry's voice on the Board is only one of many, he has agreed to resign his positions as both Director and Treasurer of [TIC] should the requested Construction Permit be granted.")

¹²⁰ See *supra* ¶ 9; 47 C.F.R. § 73.7003(b)(2).

¹²¹ See *NCE MO&O*, 16 FCC Rcd at 5102-03.

¹²² See HSU's Point Supplement, Question IV(2)(b). See generally, *NCE MO&O*, 15 FCC Rcd at 5102-03.

¹²³ See 47 C.F.R. § 73.506(a)(2).

¹²⁴ See 47 C.F.R. §§ 73.511(a), 73.512.

E. Technical Parameters.

48. As discussed previously, one applicant in each mutually exclusive group may receive points for proposing technically superior facilities. An applicant receives one point for a proposal covering ten percent more area and population than those of the next best proposal, or two points for covering 25 percent more area and population.¹²⁵ Generally, point calculations are based on the area and 2000 census population data provided by the applicants.¹²⁶

49. **Group 980616.** Only two applicants remain after the Section 307(b) analysis in this group. These two applicants are considered under the point system. With respect to technical parameters, Daystar's proposed 60 dBu contour encompasses 521 square kilometers, with a population of 51,773.¹²⁷ Central answered the technical parameters question "no" and submitted no explanatory data in support of this specific point supplement response.¹²⁸ In order to prevent one applicant from denying another applicant points for superior technical parameters, we will comparatively consider only those applications which submitted data. Thus, in a two-applicant proceeding such as this one, one applicant's failure to submit data will result in the maximum award of technical points to the competing applicant. Accordingly, Daystar will receive two points under this criterion.

50. **Groups 951129, 980510, and 981005.** The Commission has before it several groups in which one applicant had the "best" overall technical proposal, but there was no single "next best" proposal for comparison. This occurred because one applicant in the group proposed the second largest coverage area, while another proposed the second largest population coverage.

51. To be the technically "best" applicant, the applicant must propose to serve the largest area *and* population because "both are meritorious factors, and because it would otherwise be difficult in a streamlined point system, to distinguish between mutually exclusive applications, one of which would serve a populous urban area with many existing radio stations, and the other of which would offer service to a wide area with fewer people and fewer existing service options."¹²⁹ The rationale for awarding points to the technically "best" applicant is equally compelling in groups in which there is not a single "second best" proposal in terms of area and population. The Rules, however, do not prescribe how to undertake this comparison in these circumstances. We believe that the appropriate approach is to undertake separate area and population comparisons, even when this requires us to use two different "next best" applications. For example, in Group 981005, Friends of Radio Maria ("Friends") presents the "best" technical proposal by serving both the greatest area and population in the group. We compare Friends' area to the next largest area proposed by Greater Mississippi Broadcasting ("GMB") and Friends' population to the next largest population proposed by Bible Broadcasting Network ("BBN").¹³⁰ Friends will receive one point

¹²⁵ For groups in which one "best" applicant proposes to serve the largest area and population the Commission determines whether that applicant meets the 10 percent or 25 percent figure as follows. First, the Commission calculates the additional area and population to be served by the best proposal by subtracting from them, respectively, the area and population of the "next best" proposal. To obtain a percentage, the Commission divides the resulting area and population differentials by the respective area and population of the "next best" proposal, *i.e.*, by the figures that must be exceeded by either 10 percent or 25 percent to qualify for points.

¹²⁶ See *supra* note 114 (non-decisional use of 1990 census data in group 970738).

¹²⁷ See Daystar's Point Supplement, Question IV(4).

¹²⁸ See Central's Point Supplement, Question IV(4).

¹²⁹ *NCE Order*, 15 FCC Rcd at 7403.

¹³⁰ Friends' proposed 60 dBu contour encompasses 495 square kilometers with a population of 104,171 – the greatest with respect to both area and population. GMB's proposed 60 dBu contour encompasses 426 square

under the technical parameters criterion because its proposal exceeds the next best area and population proposals of the others by at least 10 percent.

52. **Group 9901XP.** CSN International (“CSN”) certified that the 60 dBu contour of its proposed station in Cocoa Beach, Florida, encompasses 179 square kilometers with a population of 40,763. The certification, which claims to cover approximately 300% more area than that of any mutually exclusive applicant, appears to be without basis.¹³¹ CSN apparently included in its area the large areas of water surrounding Cocoa Beach, which it has elsewhere properly recognized must be excluded for purposes of technical parameters.¹³² Other information in the record of this proceeding, indicated that CSN’s proposed 60 dBu contour encompasses approximately 27 square kilometers.¹³³ Technical points are awarded only to the applicant with the best technical proposal in the group, which must serve at least 10 percent more area and population than the second best proposal. No applicant in the present group qualifies for points under this criterion.

F. Other Point System Issues.

53. **Group 951129.** Each NCE applicant was required to timely file a point supplement on FCC Forms 340 or 340-Supp to be eligible to participate in a point hearing.¹³⁴ Three of the four applicants in Group 951129, American Family Association (“AFA”), Good News Ministries (“GNMI”), and Community Broadcasting, Inc. (“CBI”) each timely filed supplements on the proper form. Baptist Temple School (“BTS”) did not use the form. Instead, on May 25, 2001, BTS submitted a pleading entitled “Supplement to Application.” BTS argued that it qualifies for five points -- three as an established local applicant and two for diversity of ownership.¹³⁵ BTS’s improvised filing fails to provide all of the information and certifications required to support its point claims. For example, BTS stated that it should receive points for diversity of ownership because it has no other broadcast interests. That showing is incomplete because it has not shown that it timely amended its governing documents by the snapshot date to require that it maintain diversity of ownership, or that it has placed documentation of its claims in its local public file. In support of its localism claim, BTS submitted a 1991 determination by the Internal Revenue Service and a 1976 letter from Accelerated Christian Education, Inc., both sent to BTS at addresses in St. Joseph, Missouri.¹³⁶ BTS did not certify that it has placed this documentation in

kilometers with a population of 83,095 – second greatest in terms of area, but not population. BBN’s proposed 60 dBu contour encompasses 366 square kilometers with a population of 89,720 – second greatest in terms of population, but not area. AFA’s proposed 60 dBu contour encompasses 258 square kilometers, with a population of 71,561. *See* Friends, CMB, and BBN Point Supplements, Question IV(4).

¹³¹ *See* CSN Point Supplement, Question IV(4).

¹³² *See* CSN Point Supplement, Exhibit E-1, Methodology (“the area is [to be] corrected by subtracting the area over open water as specified in Section 73.313. . .”); *see also* 47 C.F.R. § 73.313(d)(2).

¹³³ CSN would operate virtually identical facilities to those of Black Media Works (“BMW”) using the same geographic coordinates, power, and channel. Thus, BMW’s calculation of a coverage area of approximately 27 square kilometers, excluding areas of water, is equally applicable to CSN. *See also*, Exhibit 3 to Central’s Point Supplement (comparison of all competing proposals which calculates that the land area covered by CSN and BMW’s proposals comprise 15.1 % of the total 176.9 square kilometers within their total coverage area, *i.e.*, 26.6 square kilometers).

¹³⁴ *See NCE MO&O*, 16 FCC Rcd at 5108-08; *Supplement Filing Notice*, 16 FCC Rcd at 6894; *Supplement Extension Notice*, 16 FCC Rcd at 10892.

¹³⁵ *See* BTS Point Supplement at 1.

¹³⁶ *See* BTS Point Supplement, Exhibit 1.

its public file. BTS also failed to certify that its statements are true, complete, and correct and to waive claims to the use of a particular frequency. Applicants are required to make these certifications when completing Sections IV and VI of Form 340-Supp.¹³⁷ For these reasons, we decline to credit BTS's materially incomplete submission.

G. Tie-Breaker Clarification.

54. For purposes of the tie-breakers, NCE FM applicants report the number of authorized commercial and NCE AM, FM, and FM translator stations (other than fill-in translator stations) for which they hold authorizations or have submitted applications.¹³⁸ All ties in this proceeding were resolved pursuant to the first tie-breaker -- fewest existing authorizations.¹³⁹ Nevertheless, we have noticed that some applicants were unsure of the correct methodology for computing the second tie-breaker -- fewest applications.¹⁴⁰ Some specified that they had (or had not) included the application at issue as one of pending applications reported. Others qualified their responses to identify whether they included short form submissions on Form 175 as "applications." We will clarify our requirements to provide guidance to future applicants.

55. Applicants should include the application at issue when counting their pending applications. Thus, "one" pending application is the lowest possible number of pending applications that can be specified correctly on any point system submission. Applicants should count all new or major modification radio station applications filed on FCC Forms 301, 318, 340, and 349.¹⁴¹ Applicants should not include short form submissions filed on Form 175 because that Form is for preliminary submissions. If a Form 175 filer subsequently submits a long form application, the applicant must amend its tie-breaker response at that time, pursuant to the requirement that applicants must report changes that would diminish their comparative position.¹⁴² We direct the staff to update the instructions to the Form 340 application accordingly.

H. Major Changes in Ownership.

56. A number of the applicants considered herein have filed amendments or other documents which reflect substantial changes in their officers and/or governing boards since they filed their applications. Under the Rules, a 50 percent change in the ownership of an NCE applicant would

¹³⁷ BTS's improvised pleading includes certifications that serve a different purpose, such as its certification that it is not subject to denial of benefits pursuant to the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

¹³⁸ See 47 C.F.R. § 73.7003(b)(2).

¹³⁹ See 47 C.F.R. § 73.7003(c)(1).

¹⁴⁰ See 47 C.F.R. § 73.7003(c)(2).

¹⁴¹ An applicant for a major modification would count the current authorization for the station it seeks to modify. This reflects that the modification applicant will continue to hold its existing authorization, regardless of whether the modification application is granted, *See generally, NCE MO&O*, 16 FCC Rcd at 5094. We recognize that counting such an existing authorization for purposes of a tie-breaker has the potential to break ties in favor of new applicants over those seeking modifications. As the Commission has acknowledged, a proposal for new facilities is more likely to prevail over one for modified facilities under our comparative procedures, a result consistent with the Commission's desire to maximize the provision of additional service. *Id.* (applicants for new and modified NCE stations must report differently-sized areas for purposes of computing technical points).

¹⁴² See, e.g., *Section 1.65 Notice*, 19 FCC Rcd at 24740.

generally be considered a “major change” and would not be permissible outside of a filing window.¹⁴³ Accordingly, we must consider whether applicants undergoing such changes are to be eliminated from consideration, or whether rule waivers are appropriate. With one exception, we have limited our consideration of this issue to applicants that we have identified as tentative selectees within a group. A major change in an applicant that has not been tentatively selected would generally be irrelevant because that applicant would have received all of the points to which it was entitled, yet would not have had sufficient points to receive the permit, even had its ownership remained unchanged.

57. One example of an NCE tentative selectee that has experienced a 50 percent change in ownership is Iowa State in Group 94123E. Iowa State filed its application in 1995. At approximately the same time, the Commission initiated a rulemaking proceeding to establish the new NCE comparative procedures.¹⁴⁴ Since 1995, a majority of the Iowa State Board of Regents and of the officers selected by the Regents to control the radio operations of the facility proposed by Iowa State have changed.¹⁴⁵ The change has occurred gradually pursuant to state law,¹⁴⁶ not as an outgrowth of any party’s desire to gain control over an entity which has pending an NCE new station application.¹⁴⁷

58. Another representative applicant experiencing governing similar board changes is Hyles-Anderson College (“HAC”) in Group 89101E. HAC filed its application in 1989, prior to the NCE rulemaking proceeding. Since that time, a majority of HAC’s governing board, which is elected by church membership, has changed gradually.¹⁴⁸ Again, the change appears to have occurred naturally as the organization evolved and grew, not as an outgrowth of any party’s desire to gain control over a pending NCE new station application.¹⁴⁹

¹⁴³ *Id.* at 47 C.F.R. § 73.3573(a)(1), (b)(2), and (b)(3).

¹⁴⁴ *See supra* n.4.

¹⁴⁵ *See* File No. BPED-19950213MB, as amended, Question II(6). At the time of its application, Iowa State had three officers, appointed by the state Board of Regents, with authority over Iowa State’s radio operations. *See* File No. BPED-19950213MB, Exhibit III. The Board of Regents is composed of nine members appointed for staggered six-year terms by the Governor, with approval from the State Senate. *Id.* Iowa filed amendments on November 2, 1995, July 9, 1997, August 4, 1999, October 10, 2001, and September 22, 2003, reflecting an evolution of its governing board. The amendment filed in September 2003 indicates that there are now two officers that oversee Iowa State’s radio operations and that only one was one of the original three officers. The Board of Regents had only one original member at the time of Iowa State’s 2003 amendment.

¹⁴⁶ *See Iowa Code*, Ch. 62 (attached to Iowa State’s Point Supplement).

¹⁴⁷ *See generally Constellation Communications*, Memorandum Opinion and Order, 11 FCC Rcd 18502, 18512 (1996) (“*Constellation*”) (waiving 47 C.F.R. § 25.116 to accept major ownership amendment without issuance of a new file number to application for a satellite authorization, where the ownership change occurred as a result of routine business and not for the purpose of acquiring the pending application).

¹⁴⁸ *See* File No. BPED-19891019MA, as amended, Question II(6). HAC is governed by a six-member Board of Directors (also known as its administrative council) which is elected by the Board of Deacons of the First Baptist Church of Hammond, Indiana. *Id.* and associated exhibits. The Board of Deacons, in turn, is elected by the general membership of the Church. HAC’s 1989 application identified 100 people with voting interests, which appear to correspond to 94 members of the Board of Deacons and its six officers. *Id.* An amendment filed in January 2005 indicates that only two of the original six officers remain and that the Board of Deacons has grown considerably. *Id.*

¹⁴⁹ *See Constellation*, 11 FCC Rcd at 18512.

59. The Commission in other contexts has recognized that changes in NCE governing boards are inevitable over periods as brief as four years.¹⁵⁰ We continue to believe it would be unreasonable to penalize Iowa State, HAC, and other similarly situated NCE applicants for routine and inevitable changes in their boards or other governing bodies, over the substantially longer period that the Commission was unable to act on their applications due to pending NCE rulemaking and judicial proceedings.¹⁵¹ Therefore, we waive Section 73.3573 with respect to the change in the governing bodies of these applicants and others, as noted in the ordering clauses and Appendix to this Order.¹⁵²

60. The staff, as part of its fair distribution analysis, is likely to encounter pending NCE applicants that have experienced gradual ownership changes over long periods and not as an outgrowth of the party's desire to gain control over the NCE station application. We direct the staff to waive the major change provision in Section 73.3573 for similarly situated NCE applicants. We expect that many pending NCE applicants that have experienced 50 percent ownership changes will qualify for such waivers.

61. Waivers, however, are not warranted in all circumstances, as illustrated by the following case. Group 950215 consists of two applicants which each proposes to construct an NCE station in McCloud, California. The community of McCloud is located in Siskiyou County, California, which borders the State of Oregon. One applicant, Oregon, filed a Petition to Deny the competing application of Fatima Response, Inc. d/b/a/ St. Michael's Catholic Radio ("Fatima").¹⁵³ Ordinarily, petitions to deny are considered only against a tentative selectee.¹⁵⁴ Even though the Commission ultimately does not apply a point system in Group 950215 nor identify Fatima as a tentative selectee, we will address Oregon's concerns about Fatima's ownership and corporate status since they are relevant to the resolution of this group. These matters have already been the subject of staff inquiries and are useful in illustrating changes that would not justify a waiver of Section 73.3573.

62. Fatima filed its application (the "McCloud Application") on May 3, 1996, providing an address in Long Beach, California.¹⁵⁵ Fatima's members at the time were Kimberly Thompson, its

¹⁵⁰ See *Creation of Low Power Radio Service*, Second Report and Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 6763, 6772 (2005) (waiving 47 C.F.R. § 73.865 to allow change in majority of a Low Power FM station's governing board as long as there is no change in the organization's mission); *NCE Order*, 15 FCC Rcd at 7426 (gradual changes in NCE governing boards are ordinary and inevitable prior to the end of the four-year holding period, and points for diversity and localism will thus be awarded only if governing documents ensure that these factors will be preserved despite board changes).

¹⁵¹ The Commission also has recognized that board changes in a non-stock organization will not necessarily change the nature of the organization or break continuity of control, especially if the changes occur gradually as individuals serve out established terms of office. See *Non-Stock Corporations*, Notice of Inquiry, 4 FCC Rcd 3403, 3405-07 (1989). On that basis, the Commission once proposed treating gradual board changes in membership organizations and governmental entities as not constituting a substantial change in control and, thus, to permit such changes without prior Commission consent. *Id.* at 3508. Cf. 47 U.S.C. § 310(d) (no rights under a Commission construction permit shall be transferred without Commission consent).

¹⁵² Specifically, rule waivers have been granted in groups 89101E, 94123E, 95076E, 960813, 961011, 970111, 970209, 970520, 980401, 98043S, 980605, 980704, 980805, 990101, 990306, and 990607.

¹⁵³ The Commission declines to address a character issue raised by Oregon because the Commission dismissed similar allegations when it granted Fatima's application to assign a permit to construct a new station in Dunsmuir, California (the "Dunsmuir Application"). See *Fatima Response, Inc.*, 1999 WL 809703 (1999), *recon. denied*, 15 FCC Rcd 10520 (2000) ("*Dunsmuir*") (approving application BALED-960514GK to assign the license for KZRO(FM), Dunsmuir, California).

¹⁵⁴ See 47 C.F.R. § 73.7004(a).

¹⁵⁵ McCloud Application, Section I, Question 1.

President and Christine Matson, its Vice President.¹⁵⁶ The Oregon Secretary of State's records, submitted in this and related proceedings, indicate that Fatima was incorporated in Oregon on July 7, 1993. Kimberly Thompson was again listed as President.¹⁵⁷ The Secretary of State assigned the corporation the registry number 353377-81. According to the Secretary of State, Fatima was involuntarily dissolved on October 22, 1995, approximately six months before filing the McCloud Application, and was not reinstated.¹⁵⁸ (We shall refer to this corporation as "Fatima I.")

63. On November 13, 1996, Oregon filed a Petition to Deny the McCloud Application, alleging that Fatima did not exist as a legal non-profit corporate entity. Fatima did not file any response to Oregon's Petition. On January 27, 1998, the staff requested that Fatima provide additional information concerning its corporate status both for Fatima's McCloud and Dunsmuir NCE applications. A response was submitted on February 16, 1998, by Christine Matson, Vice President.¹⁵⁹ Oregon filed a Supplemental Petition to Deny on August 20, 1999.¹⁶⁰

64. Events in early 1999 indicate a struggle between two groups for control of the application, with one trying to override actions undertaken by the other. On March 1, 1999, Franck Kato, on behalf of Fatima Response, Inc. located in Keno, Oregon, requested that the Commission dismiss the McCloud Application.¹⁶¹ According to Kato, "Fatima Response, Inc. has nothing to do with these applications," and "if the application was granted, Fatima Response, Inc. will not build nor operate the station."¹⁶² Kato further indicated that Kimberly Thompson has left the organization, and that Ms. Thompson filed the application without the corporation's consent.¹⁶³ On March 30, 1999, however, Christine Matson, as Vice President of Fatima I, submitted a letter withdrawing the dismissal request.

¹⁵⁶ Fatima's application did not list the names of the company's officers or directors, referring instead to information filed with the Commission in the Dunsmuir Application. Specifically, the Application states that the required ownership information was "filed on 5/14/96." The Dunsmuir Application was filed on that date. The McCloud Application was signed by Kimberly Thompson, as Fatima's president, and the engineering section was signed by Mike McKenna, as Technical Consultant. See McCloud Application at Sections V-B and VII.

¹⁵⁷ See Oregon Secretary of State Record (submitted as Oregon Supplemental Petition to Deny, Exhibit I-D). Shannon Saul was listed as secretary and William L. Zawila as registered agent.

¹⁵⁸ See Certificate, State of Oregon, Office of the Secretary of State, Corporate Division (June 14, 1996) (submitted as Oregon Supplemental Petition to Deny, Exhibit 2-A-1). The Commission's *Dunsmuir* decision addresses an alleged failed attempt in 1997 to reinstate corporate status in Oregon, and Fatima's claim to be a *de facto* corporation in California. In 1999, the Commission encouraged Fatima "to remove any ambiguity regarding its corporate status by hiring competent local counsel to ensure that [Fatima] exists as a valid *de jure* corporation in at least one state and is registered to do business in other pertinent jurisdictions." *Dunsmuir*, 1999 WL 809703 at n.8.

¹⁵⁹ Letter from Christine Matson, Vice President, Fatima to Secretary, FCC (Feb. 16, 1998).

¹⁶⁰ Oregon alleged that there are two Fatima corporations, Fatima I and Fatima II, and that individuals associated with Fatima II have substituted themselves for the defunct Fatima I corporation by the same name in a maneuver designed to "hijack" the original application. Oregon also maintained that this proceeding is rife with misrepresentations, false identities, forged signatures, and charges and countercharges of fraud. Oregon further alleged that both groups are involved in impermissible activities, such as the trafficking of NCE permits.

¹⁶¹ Notice of Withdrawal of Construction Permit Application (March 1, 1999) (also attached as Exhibit 1 to Oregon's Supplemental Petition to Deny).

¹⁶² *Id.*

¹⁶³ *Id.*

Matson did not contest the authority of Kato to request dismissal.¹⁶⁴ Rather, she requested that the Commission “return our request for dismissal” because Fatima had since signed a new lease option for the proposed antenna site.¹⁶⁵ The staff retained the application in pending status.

65. Articles of Incorporation for the Keno, Oregon, Fatima were filed with the Oregon Secretary of State on March 5, 1999 and assigned Oregon registry number 678625-82. (We will refer to this corporation as “Fatima II.”) On June 17, 1999, Sandra Soho, registered agent for Fatima II, submitted a pleading to the Commission alleging fraud by the registered agent and technical consultant of Fatima I.¹⁶⁶ Attached to that pleading was a Declaration of Kato as sole director of Fatima. Therein, Kato stated that “the application to build a new non-commercial educational FM broadcast station using channel 219A at McCloud, California, which has FCC file number BPED-960503MG, does not belong to Fatima Response, Inc.”¹⁶⁷ On June 4, 2001, Fatima I filed a point supplement to the McCloud Application using the original Fatima I corporate address in Long Beach, California. The point supplement was signed by Christine Matson as Vice President.¹⁶⁸ Fatima II was involuntarily dissolved on May 5, 2000, reinstated on March 12, 2004, and administratively dissolved on May 6, 2005.

66. In December 2004, the staff, by public notice, reminded NCE applicants of their obligation to maintain the continuing accuracy and completeness of their pending applications.¹⁶⁹ Neither of the Fatima corporations submitted any such update to the McCloud Application. However, Fatima II filed corporate documents relating to its application to construct a new non-reserved band FM station in Merrill, Oregon.¹⁷⁰ The Merrill Application was filed in November 1995 by the parties associated with Fatima I and amended in March 1999 to substitute Kato of Fatima II as sole member. On November 14, 2000, an amendment to the Merrill Application was filed purporting to replace Franck Kato as the sole director and member with Leroy Demery because Kato allegedly “obtained a fatal illness that has caused physical problems and psychosis making it impossible for him to function as director.”¹⁷¹ The amended Merrill Application listed Demery as holding 100 percent voting control and equity in Fatima. On March 18, 2004, in the context of the Merrill Application, the staff sent an inquiry letter requesting that Fatima provide a copy of its current governing documents, its most recent annual report filed with the state, and the name(s) and address(es) of its current members and/or governing board. Although the inquiry letter was sent to both the California (Fatima I) and Oregon (Fatima II) addresses, the letter sent to the Fatima I address was returned “addressee unknown.” Leroy Demery, on behalf of Fatima II, responded that Demery is the director of Fatima and holder of 100 percent of its votes and equity. Demery attached a copy of the March 5, 1999, Fatima II Articles of Incorporation; a Reinstatement Annual Report to the

¹⁶⁴ Letter from Christine Matson, Vice President, Fatima to Secretary, FCC (Mar. 30, 1999).

¹⁶⁵ *Id.*

¹⁶⁶ Notice of Criminal Fraud by William Zawila and Mike McKenna (June 17, 1999) (also attached as Exhibit XI-A to Oregon’s Supplemental Petition to Deny).

¹⁶⁷ Declaration of Franck Kato, Director, Fatima (June 14, 1999).

¹⁶⁸ The signature for Christine Matson on the point supplement is vastly different from her signature on previous correspondence.

¹⁶⁹ See Section 1.65 Notice, Public Notice, 19 FCC Red at 24740.

¹⁷⁰ Application of Fatima Response, Inc. to construct a new FM station in Merrill, Oregon, File No. BPED-19951108NE (“Merrill Application”), *dismissed, Fatima Response, Inc.*, DA 06-2016, 2006 WL 3025784 (MB Oct 25, 2006).

¹⁷¹ October 18, 1999, Amendment to Merrill Application, Attachment A.

Oregon Secretary of State dated March 12, 2004; a “Reinstatement Amended,” also dated March 12, 2004; and an undated “Acknowledgment of Reinstatement Amended” from the Secretary of State. Despite the report in 2000 of Mr. Kato’s physical and psychiatric deterioration, the 2004 Reinstatement Annual Report listed him as Secretary of the applicant.

67. Based upon the evidence produced by the parties and that of which we take administrative notice, we conclude that there are two possible scenarios concerning changes in Fatima, either of which would result in dismissal of its McCloud Application. First, Fatima has undergone at least two major and sudden changes of ownership since its McCloud Application was filed. Even assuming *arguendo* that the March 5, 1999, incorporation of Fatima II constituted a revival of Fatima I, 100 percent of the members changed, from Kimberly Thompson and Christine Matson to Franck Kato as sole member and owner. Then, in November of 2000, 100 percent of the membership changed, from Franck Kato to Leroy Demery. Either event would be considered a major change in ownership.¹⁷² The circumstances surrounding these changes – as highlighted by the struggle to dismiss and/or retain in pending status the McCloud Application -- evidence an attempt to gain control of the applicant entity, not a gradual replacement of the applicant members over time, in the ordinary course of the entity’s corporate existence. Thus, grant of a waiver of the major change provision in Section 73.3573 would not serve the public interest, and the application may be dismissed on this basis.

68. Alternatively, Fatima, as currently constituted, is not the entity that originally filed the application for an NCE FM broadcast station at McCloud, California.¹⁷³ The only Fatima that had ever existed in the State of Oregon in the general time frame in which the McCloud Application was filed was Fatima I. That corporation was dissolved before the application was filed and has not been revived. Under this scenario, another group of individuals, entirely different from those who formed Fatima I, formed a new corporation on March 5, 1999, by filing new Articles of Incorporation and receiving a new registry number, 678625-82, from the Oregon Secretary of State (Fatima II). By this filing, the principals of Fatima II merely sought to replace the original McCloud applicant, Fatima I, with their newly-formed but identically named corporation.¹⁷⁴ In such circumstances, the proper applicant for the McCloud NCE permit would not be Fatima II, but the now-defunct Fatima I. Fatima I failed to file the required Section 1.65 amendments, including one to update its now-invalid mailing address. Under this fact pattern, even had ownership of Fatima I not changed by over 50 percent, Fatima I is a long-defunct corporation that has failed to prosecute its McCloud application. This too is grounds for dismissal.¹⁷⁵

69. Accordingly, under either scenario discussed above, dismissal of the Fatima McCloud Application is the appropriate action. Oregon is the sole remaining applicant. Oregon’s application was accepted for filing by a public notice pursuant to our former A/B procedures,¹⁷⁶ the petition to deny period triggered by that notice has run, and Oregon, as a singleton, has not been subject point system

¹⁷² See 47 C.F.R. §§ 73.3573(a)(1) (major change in ownership occurs when the original party or parties to an application do not retain 50 percent ownership interest in the application as originally filed), and 73.3573(b)(2) (amendment to a non-reserved band application that would effect a major change will not be accepted).

¹⁷³ This second scenario is proposed by Oregon in its Supplemental Petition to Deny. See *supra* note 160.

¹⁷⁴ Any contention that Fatima II was merely a revival and change in control of Fatima I is contradicted by the fact that new Articles were filed and a new registry number assigned.

¹⁷⁵ 47 C.F.R. § 73.3568(a)(1).

¹⁷⁶ See *Noncommercial Educational FM Broadcast Applications Accepted for Filing and Notification of Cut-Off Date*, Public Notice, Report No. A-292 (March 29, 1996) (announcing acceptance of File No. BPED-19950210MA and establishing May 3, 1996, cut-off date for petitions to deny).

findings that might be challenged in a further petition to deny. Therefore, we direct the staff to issue a public notice granting Oregon's application as a "singleton."

IV. NARRATIVE OF GROUP POINT SYSTEM DETERMINATIONS

70. This Section contains narrative descriptions of our point system analyses in each mutually exclusive proceeding, organized chronologically. Unless otherwise noted, each component of the analysis is based on information provided in the point supplements of the respective applicants, with no change by the Commission.¹⁷⁷

71. **Group 880611.** This group consists of the mutually exclusive applications of Research Foundation, California State University, Chico ("Foundation") and State of Oregon Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University ("Oregon"). Both propose to serve the community of Redding, California. As we have discussed *supra*, each applicant believed that it qualified for points as an established local applicant, but neither applicant met the precise definition of established local applicant and, therefore, will receive no localism points.¹⁷⁸ Foundation claimed two points for diversity of ownership. Oregon certified that it is not entitled to any points under that criterion. Oregon claimed two points as a statewide network. Foundation certified that it does not qualify for points under this criterion. With respect to technical parameters, Oregon's proposed 60 dBu contour would encompass 5,807 square kilometers with a population of 161,907. Foundation's proposed 60 dBu contour would encompass 9,011 square kilometers with a population of 168,084. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant in this group qualifies for points under this criterion. Accordingly, Foundation and Oregon are each credited with a total of two points. Both applicants will proceed to a tie-breaker.

72. The first issue considered in a tie-breaker for NCE-FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. Foundation certifies that it has attributable interests in 4 radio authorizations. Oregon certifies that it has attributable interests in 42 radio authorizations. Foundation therefore prevails based on this first tie-breaker criterion and is the tentative selectee in Group 880611. The remaining tie-breaker criterion need not be considered.

73. **Group 89101E.** This group consists of the mutually exclusive applications of Hyles-Anderson College ("HAC") and Moody Bible Institute ("MBI"). Both propose to serve the community of Crown Point, Indiana. HAC claimed three points as an established local applicant. MBI certified that it is not entitled to any points for this criterion. HAC and MBI each claimed two points for diversity of ownership. Neither applicant claimed points as a statewide network. With respect to technical parameters, HAC's proposed 60 dBu contour would encompass 1,330 square kilometers with a population of 491,103. MBI's proposed 60 dBu contour would encompass 4,592 square kilometers with a population of 638,369. One technical point is awarded to the applicant that serves at least 10 percent

¹⁷⁷ Specifically, information relating to the applicants' Section 307(b) claims including, where applicable, populations receiving first and/or second NCE radio services were reported by the applicants in their responses to Questions III(a) and (b) of their point supplements and associated exhibits. Claims to qualify as established local applicants, for diversity of ownership, and as statewide networks were reported in the point supplement responses to Questions IV(1), (2) and (3) respectively. Applicants reported the area and population figures used in our analyses of technical parameters in response to point supplement Question IV(4) and associated exhibits. Tie-breaker information concerning the applicants' attributable interests in other radio authorizations were reported at Question V(1).

¹⁷⁸ See *supra* ¶¶ 32 -36.

more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Therefore, MBI will receive 2 points and HAC will not receive any points under this criterion. Accordingly, HAC is credited with a total of 5 points and MBI is credited with a total of 4 points. Thus, HAC is the prevailing tentative selectee in Group 89101E. Tie-breaker criteria need not be considered.

74. **Group 941116.** This group consists of the mutually exclusive applications of American Family Association (“AFA”) and Positive Alternative Radio, Inc. (“PAR”). Both propose to serve the community of Ashland, Kentucky. AFA and PAR each certified that it is not entitled to any points as an established local applicant. PAR did not claim any points for diversity of ownership. AFA claimed two points under this criterion, based on a pledge to request cancellation of FM translator station W216AT, Ashland, Kentucky upon the commencement of operation of the proposed full service station.¹⁷⁹ Neither applicant claims points as a statewide network. With respect to technical parameters, AFA’s proposed 60 dBu contour would encompass 389 square kilometers with a population of 98,264. PAR’s proposed 60 dBu contour would encompass 2,216 square kilometers with a population of 232,055. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Therefore, PAR is credited with two points and AFA is not credited with any points under this criterion. Accordingly, AFA and PAR are both credited with a total of two points. Both applications will proceed to a tie-breaker.

75. The first issue considered in a tie-breaker for NCE-FM applicants is the number of radio authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. AFA certifies that it has attributable interests in 227 radio authorizations. PAR certifies that it has attributable interests in 41 radio authorizations. PAR prevails based on this first tie-breaker criterion and is the tentative selectee in Group 941116. The remaining tie-breaker criterion need not be considered.

76. **Group 94123E.** This group consists of the mutually exclusive applications of Grassroots Broadcasting Company (“Grassroots”), Iowa State University of Science and Technology (“Iowa State”), and American Family Association (“AFA”). Grassroots and Iowa State propose to serve Ottumwa, Iowa. AFA proposes to serve Fairfield, Iowa. As discussed *supra*, AFA is eliminated in a Section 307(b) analysis and the two Ottumwa applicants proceed to a point hearing.¹⁸⁰

77. Grassroots and Iowa State each claimed three points as established local applicants and two points for diversity of ownership. Neither claimed points as a statewide network. With respect to technical parameters, Grassroots’ proposed 60 dBu contour would encompass 484 square kilometers with a population of 32,429. Iowa State’s proposed 60 dBu contour would encompass 4,835 square kilometers with a population of 70,719. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Therefore, Iowa State will receive two points and Grassroots will not receive any points under this criterion. Accordingly, Grassroots is credited with a total of 5 points, and Iowa State with a total of 7 points. Iowa State is the prevailing tentative selectee in Group 94123E. A tie-breaker analysis is not necessary.

78. **Group 950215.** This group originally consisted of the applications of Fatima Response, Inc. d/b/a/ St. Michael’s Catholic Radio (“Fatima”) and State of Oregon Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University (“Oregon”). As discussed *supra*, we have dismissed Fatima’s application because it has undergone a major change in ownership

¹⁷⁹ AFA’s Point Supplement, Question IV(2)(b) and Exhibit 2.

¹⁸⁰ See *supra*, ¶ 22.

under circumstances that do not justify a waiver or is a long-defunct corporation that has failed to prosecute its application.¹⁸¹ A point system analysis is not necessary because, with dismissal of Fatima's application, there are no longer any mutually exclusive applications in this group. Oregon, the sole remaining applicant, can be processed as a singleton.

79. **Group 95031E.** This group consists of the mutually exclusive applications of Christian Arts and Education, Inc. ("CEA") and State of Oregon Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University ("Oregon"). Both applicants propose to serve the community of Redding, California. CEA certified that it is not entitled to any points as an established local applicant. As discussed *supra*, Oregon believed that it qualified for points as an established local applicant, but did not meet the precise definition of established local applicant and, therefore, will not receive any localism points.¹⁸² Oregon certified that it is not entitled to any points for diversity of ownership. CEA claimed two points for diversity of ownership. CEA certified that it is not entitled to any points as a statewide network. Oregon claimed two points as a statewide network.¹⁸³ With respect to technical parameters, Oregon's proposed 60 dBu contour would encompass 3,961 square kilometers with a population of 154,474. CAE's proposed 60 dBu contour would encompass 4,507 square kilometers with a population of 136,944. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in the present group qualifies for points under this criterion. Accordingly, CEA and Oregon are each credited with a total of 2 points. Both applicants will proceed to a tie-breaker.

80. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. CEA certifies that it has no attributable interests in radio authorizations. Oregon certifies that it has attributable interests in 42 radio authorizations. CEA therefore prevails based on this first tie-breaker criterion and is the tentative selectee in Group 95031E. The remaining tie-breaker criterion need not be considered.

81. **Group 95062E.** This group consists of the mutually exclusive applications of Positive Alternative Radio, Inc. ("PAR") and Educational Media Corporation ("EMC"). PAR proposes to serve Lynchburg, Virginia and EMC proposes to serve Rustburg, Virginia. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. PAR and EMC each certified that it would not qualify for a Section 307(b)

¹⁸¹ See *supra*, ¶¶ 67-69.

¹⁸² See *supra*, ¶¶ 35-37.

¹⁸³ Specifically, Oregon stated that it has made arrangements with the State of California to coordinate educational efforts in the border area of Southern Oregon and Northern California. Oregon stated that this arrangement includes the provision of educational programming by Oregon for use in or in furtherance of the curriculum of at least five full-time California state colleges or universities that are located within the service contour of radio stations licensed to Oregon. See Oregon's Point Supplement, Question IV(3) and associated exhibit. Oregon further said that, if the subject application is granted, its network would serve one additional California state college (Simpson College) in furtherance of its curriculum. *Id.* Oregon maintained that it qualifies for two statewide network points under 47 C.F.R. § 73.7003(a)(3)(ii), which pertains to applicants that are institutions of higher learning under common authority. That rule section is not applicable in this case because Oregon and these institutions are unrelated entities. We do, however, find Oregon qualified under 47 C.F.R. § 73.7003(a)(3)(iii), which provides two statewide network points to organizations with or without direct authority over schools, that will regularly provide programming in coordination with accredited institutions.

preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

82. Each applicant certified that it is not entitled to any points as an established local applicant. EMC originally sought two points for diversity of ownership, but has since amended its application to notify the Commission that it no longer qualifies for such points due to its acquisition of WTTX-FM, Appomattox, Virginia.¹⁸⁴ Neither applicant claimed points as a statewide network. With respect to technical parameters, PAR's proposed 60 dBu contour would encompass 3,020 square kilometers with a population of 162,558. EMC's proposed 60 dBu contour would encompass 2,526 square kilometers with a population of 166,848. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant in this group qualifies for points under this criterion. Accordingly, PAR and EMC have not claimed or received any points. PAR and EMC will proceed to a tie-breaker.

83. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. PAR certified that it has attributable interests in 83 radio authorizations. EMC certifies that it has attributable interests in 17 radio authorizations. EMC therefore prevails based on this first tie-breaker criterion and is the tentative selectee in Group 95062E. The remaining tie-breaker criterion need not be considered.

84. **Group 95072E.** This group consists of mutually exclusive applications of Thomas Aquinas School ("TAS"), Stockton Christian Life College, Inc. ("Stockton"), and the Board of Regents of the University of Nevada acting on behalf of Truckee Meadows Community College ("Regents"). TAS proposes to serve Tahoe City, California. Stockton and Regents propose to serve Reno, Nevada. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. TAS, Stockton, and Regents each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

85. TAS and Regents claimed three points as established local applicants. Stockton certified that it is not entitled to any points for this criterion. TAS and Regents each certified that it is not entitled to points for diversity of ownership. Stockton claimed two points for diversity of ownership based on its exclusion of FM translator station K202BR (now K201HO), Reno, Nevada for which Stockton pledges to seek cancellation upon commencement of operations of its proposed full service station.¹⁸⁵ None of the applicants claimed points as a statewide network. With respect to technical parameters, TAS's proposed 60 dBu contour would encompass 6,884 square kilometers with a population of 465,407 people. Stockton's proposed 60 dBu contour would encompass 13,183 square kilometers with a population of 526,612 people. Regents' proposed 60 dBu contour would encompass 1,377 square kilometers with a population of 211,760 people. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Stockton will receive one point under this criterion. Accordingly, TAS, Stockton and Regents are each credited with a total of 3 points and will proceed to a tie-breaker.

¹⁸⁴ See EMC's Amended Point Supplement.

¹⁸⁵ See Stockton's Point Supplement, Question IV(2) and Exhibit 2.

86. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. TAS certified that it has attributable interests in 17 radio authorizations. Stockton certified that it has attributable interests in 19 radio authorizations. Regents certified that it has attributable interests in 14 radio authorizations. Regents therefore prevails based on this first tie-breaker criterion and is the tentative selectee in Group 95072E. The remaining tie-breaker criterion need not be considered.

87. **Group 95076E.** This group consists of mutually exclusive applications of American Family Association (“AFA”) and Iowa State University of Science and Technology (“Iowa State”). AFA and Iowa State both propose to serve Perry, Iowa. AFA certified that it is not entitled to any points as an established local applicant. Iowa State claimed three points under this criterion. Neither applicant claim points for diversity of ownership or as a statewide network. With respect to technical parameters, AFA’s proposed 60 dBu contour would encompass 4,909 square kilometers with a population of 221,798. Iowa State’s proposed 60 dBu contour would encompass 5,085 square kilometers with a population of 238,102. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant in this group qualifies for points under this criterion. Accordingly, Iowa is credited with a total of 3 points and AFA is not credited with any points. Thus, Iowa State is the prevailing tentative selectee in Group 95076E. A tie-breaker analysis is not necessary.

88. **Group 95083E.** This group consists of the mutually exclusive applications of Bible Broadcasting Network, Inc. (“BBN”), Calvary Chapel of Honolulu, Inc. (“Calvary”), and Maka’aniana Broadcasting Company, Ltd. (“MBC”). BBN and Calvary propose to serve Honolulu, Hawaii. MBC proposes to serve Kaneohe, Hawaii. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. BBN, Calvary, and MBC each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

89. BBN certified that it is not entitled to any points as an established local applicant. Calvary and MBC each claimed three points as an established local applicant. BBN and Calvary each certified that it is not entitled to points for diversity of ownership. MBC claimed 2 points under this criterion. No applicant claimed points as a statewide network. With respect to technical parameters, BBN’s proposed 60 dBu contour would encompass 1,590 square kilometers with a population of 876,151. Calvary’s proposed 60 dBu contour would encompass 1,582 square kilometers with a population of 876,302. MBC’s proposed 60 dBu contour would encompass 1,284 square kilometers with a population of 882,209. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies for points under this criterion. Accordingly, MBC is credited with a total of 5 points, Calvary with a total of 3 points, and BBN with no points. Thus, MBC is the prevailing tentative selectee in Group 95083E. A tie-breaker analysis is not necessary.

90. **Group 95095E.** This group consists of mutually exclusive applications of Shofar Broadcasting Corporation (“Shofar”) and Positive Alternative Radio, Inc. (“PAR”). Both applicants propose to serve Beckley, West Virginia. Shofar and PAR each certifies that it is not entitled to points as an established local applicant, for diversity of ownership, or as a statewide network. With respect to technical parameters, Shofar’s proposed 60 dBu contour would encompass 3,238 square kilometers with a population of 137,057. PAR’s proposed 60 dBu contour would encompass 2,770 square kilometers with a population of 121,717. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Therefore, Shofar will receive one point and PAR will not receive

any points under this criterion. Accordingly, Shofar is credited with a total of 1 point, and PAR is not credited with any points. Thus, Shofar is the prevailing tentative selectee in Group 95095E. A tie-breaker analysis is not necessary.

91. **Group 951129.** This group consists of mutually exclusive applications of Bible Baptist Temple d/b/a Baptist Temple School (“BTS”), American Family Association (“AFA”), Good News Ministries, Inc. (“GNMI”), and Community Broadcasting, Inc. (“CBI”). Each applicant proposes to serve St. Joseph, Missouri. As discussed *supra*, BTS attempted to show that it qualified for five points, but used a self-designed form that did not contain sufficient information to demonstrate that it qualified for the points claimed.¹⁸⁶ Accordingly, we will not credit BTS with any points and, therefore, will limit our discussion of points to the other three applicants.¹⁸⁷ GNMI certified that it qualifies for three points as an established local applicant. CBI and AFA each certified that it is not entitled to any points under this criterion. AFA, GNMI, and CBI each certified that it is not entitled to any points for diversity of ownership or as a statewide network. With respect to technical parameters, AFA’s proposed 60 dBu contour would encompass 6,731 square kilometers with a population of 204,567. GNMI’s proposed 60 dBu contour would encompass 7,246 square kilometers with a population of 208,705. CBI’s proposed 60 dBu contour would encompass 7,214 square kilometers with a population of 201,523. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies for points under this criterion.¹⁸⁸ Accordingly, GNMI is credited with a total of 3 points. AFA, CBI, and BTS are not credited with any points. Thus, GNMI is the prevailing tentative selectee in Group 951129. A tie-breaker analysis is not necessary.

92. **Group 960304.** This group consists of the mutually exclusive applications of Life Anew Ministries, Inc. d/b/a Life Christian Academy (“Life”) and Board of Regents, Murray State University (“MSU”). Both applicants propose to serve Madisonville, Kentucky. Both Life and MSU claimed three points as established local applicants and two points for diversity of ownership. Neither applicant claimed points as a statewide network. With respect to technical parameters, Life’s proposed 60 dBu contour would encompass 2,941 square kilometers with a population of 69,308. MSU’s proposed 60 dBu contour would encompass 973 square kilometers with a population of 36,927. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Life will receive two points under this criterion. Accordingly, Life is credited with a total of 7 points and MSU is credited with a total of 5 points. Thus, Life is the prevailing tentative selectee in Group 960304. A tie-breaker analysis is not necessary.

93. **Group 960813.** This group consists of American Family Association (“AFA”) and University of Northern Iowa (“UNI”). AFA proposes to serve Kewanee, Illinois, and UNI proposes to serve Bettendorf, Iowa. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. AFA and UNI each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

¹⁸⁶ See *supra*, ¶ 53.

¹⁸⁷ *Id.*

¹⁸⁸ For purpose of this determination, we compared GNMI’s “best” technical proposal to the next best area of CBI and the next best population of AFA. See *supra*, ¶¶ 50 - 51.

94. AFA certified that it is not entitled to any points as an established local applicant. UNI claims three points under this criterion. AFA does not claim points for diversity of ownership. UNI certifies that it qualifies for two points under this criterion. Neither applicant claims points as a statewide network. With respect to technical parameters, AFA's proposed 60 dBu contour would encompass 756 square kilometers with a population of 325,303. UNI's proposed 60 dBu contour would encompass 5,916 square kilometers with a population of 343,383. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies for points under this criterion. Accordingly, UNI is credited with a total of 5 points and AFA is not credited with any points. Thus, UNI is the prevailing tentative selectee in Group 960813. A tie-breaker analysis is not necessary.

95. **Group 96086E.** This group consists of the mutually exclusive applications of American Family Association ("AFA") and Bible Broadcasting Network, Inc. ("BBN"). Both applicants propose to serve the community of Fayetteville, North Carolina. AFA and BBN certified that they were not entitled to any points as an established local applicant and, therefore, will receive no localism points. BBN claimed two points for diversity of ownership. AFA certified that it is not entitled to any points for that criterion. AFA and BBN each certified that it does not qualify for points as a statewide network. With respect to technical parameters, AFA's proposed 60 dBu contour would encompass 2,410 square kilometers with a population of 260,087. BBN's proposed 60 dBu contour would encompass 493 square kilometers with a population of 198,551. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Thus, AFA will receive 2 points and BBN will not receive any points under this criterion. Accordingly, AFA and BBN are each credited with a total of 2 points. AFA and BBN will proceed to a tie-breaker.

96. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. AFA certified that it has attributable interests in 227 radio authorizations. BBN certifies that it has attributable interests in 144 radio authorizations. BBN therefore prevails based on this first tie-breaker criterion and is the tentative selectee in Group 96086E. The remaining tie-breaker criteria need not be considered.

97. **Group 960908.** This group consists of the Holy Family Communication, Inc. ("HFC") and Mary V. Harris Foundation ("Harris"). HFC proposes to serve Lancaster, New York. Harris proposes to serve Williamsville, New York. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. HFC and Harris each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

98. HFC claimed three points as an established local applicant. Harris certified that it is not entitled to any points as an established local applicant. HFC and Harris each certified that it is entitled to two points for diversity of ownership and not entitled to any points as a statewide network. With respect to technical parameters, HFC's proposed 60 dBu contour would encompass 228 square kilometers with a population of 93,427. Harris's proposed 60 dBu contour would encompass 204 square kilometers with a population of 300,673. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies for points under this criterion.

Accordingly, HFC is credited with a total of 5 points, and Harris with a total of 2 points. Thus, HFC is the prevailing tentative selectee in Group 960908E. A tie-breaker analysis is not necessary.

99. **Group 960911.** This group consists of the mutually exclusive applications of American Family Association (“AFA”) and Okaloosa Public Radio, Inc. (“OPR”). AFA proposes to serve Cairo, Georgia, and OPR proposes to serve Quincy, Florida. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. AFA and OPR each claim a preference on this basis. Neither applicant asserts that it is entitled to a first service preference. Accordingly, we consider whether AFA or OPR would provide a combined first and second NCE service to 5,000 more persons than the other applicant. AFA would provide a combined first and second service to 23,569 people (0 first service plus 23,569 second service). OPR would provide a combined first and second service to 20,242 people (3,042 first service plus 17,200 second service). Neither applicant proposes to serve at least 5,000 more people than the other. The applications, therefore, proceed to a point hearing.

100. Each applicant certified that it is not entitled to any points as an established local applicant. OPR claimed two points for local diversity of ownership. AFA certified that it is not entitled to any points under this criterion. Neither applicant claims points as a statewide network. With respect to technical parameters, AFA’s proposed 60 dBu contour would encompass 3,184 square kilometers with a population of 128,865. OPR’s proposed 60 dBu contour would encompass 3,988 square kilometers with a population of 120,956. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant in this group qualifies for points under this criterion. Accordingly, OPR is credited with a total of 2 points and AFA is not credited with any points. Thus, OPR is the prevailing tentative selectee in Group 960911. A tie-breaker analysis is not necessary.

101. **Group 961010.** This group consists of mutually exclusive applications of The Love Station, Inc. (“Love”), Educational Media Foundation (“EMF”), American Family Association (“AFA”), and Community Broadcasting, Inc. (“CBI”). Love and CBI propose to serve Piedmont, Oklahoma. EMF proposes to serve Yukon, Oklahoma. AFA proposes to serve El Reno, Oklahoma. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. Love, EMF, AFA, and CBI each claims a preference on this basis. A full Section 307(b) analysis of this group appears in Section III(B) *supra*. As discussed therein, CBI was eliminated based on first service, and the remaining applicants (Love, EMF, and AFA) would provide first and second NCE services that are comparable to each other in terms of area and population.¹⁸⁹ Love, EMF, and AFA, therefore, proceed to a point hearing.

102. Love, EMF, and AFA each certified that it is not entitled to any points as an established local applicant. Love and EMF each claims two points for diversity of ownership. AFA certified that it is not entitled to any points under this criterion. None of the applicants claimed points as a statewide network. With respect to technical parameters, Love’s proposed 60 dBu contour encompasses 8,431 square kilometers with a population of 158,850. EMF’s proposed 60 dBu contour encompasses 7,293 square kilometers with a population of 105,383. AFA’s proposed 60 dBu contour encompasses 7,792 square kilometers with a population of 150,078. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies

¹⁸⁹ See *supra*, ¶ 23.

for points under this criterion. Accordingly, Love and EMF are each credited with a total of 2 points, and AFA is not credited with any points. AFA is thus eliminated from further consideration. Love and EMF will proceed to the tie-breaker.

103. The first issue considered in a tie-breaker for NCE-FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. EMF certified that it has attributable interests in 538 radio authorizations. Love certified that it has attributable interests in seven radio authorizations. Love therefore prevails based on this first tie-breaker criterion and is the tentative selectee in Group 961010. The remaining tie-breaker criterion need not be considered.

104. **Group 961011.** This group consists of mutually exclusive applications of American Family Association (“AFA”) and University of Northern Iowa (“UNI”). Each applicant proposes to serve Fairfield, Iowa. UNI certified that it qualifies for three points as an established local applicant. AFA certified that it is not entitled to any points under this criterion. UNI and AFA each certified that it is not entitled to any points for diversity of ownership or as a statewide network. With respect to technical parameters, AFA’s proposed 60 dBu contour would encompass 239 square kilometers with a population of 11,819. UNI’s proposed 60 dBu contour would encompass 498 square kilometers with a population of 12,885. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies for points under this criterion. Accordingly, UNI is credited with a total of 3 points and AFA is not credited with any points. Thus, UNI is the prevailing tentative selectee in Group 961011. A tie-breaker analysis is not necessary.

105. **Group 961121.** This group consists of the mutually exclusive applications of Community Public Radio, Inc. (“CPRI”), Augusta Radio Fellowship Institute (“Augusta”), and Life Radio Ministries, Inc. (“Life”). Each applicant proposes to serve Peachtree City, Georgia. Life certified that it qualifies for three points as an established local applicant. CPRI and Augusta each certified that it is not entitled to any points under this criterion. Augusta and Life each claimed two points for diversity of ownership. CPRI certified that it is not entitled to any points under this criterion. None of the applicants claim points as a statewide network. With respect to technical parameters, CPRI’s proposed 60 dBu contour would encompass 2,215 square kilometers with a population of 180,902. Augusta’s proposed 60 dBu contour would encompass 1,339 square kilometers with a population of 86,656. Life’s proposed 60 dBu contour would encompass 2,205 square kilometers with a population of 182,797. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies for points under this criterion. Accordingly, Life is credited with a total of 5 points, Augusta is credited with a total of 2 points, and CPRI is not credited with any points. Thus, Life is the prevailing tentative selectee in Group 961121. A tie-breaker analysis is not necessary.

106. **Group 970111.** This group consists of mutually exclusive applications of American Family Association (“AFA”) and University of Northern Iowa (“UNI”). Each applicant proposes to serve Ottumwa, Iowa. UNI certified that it qualifies for three points as an established local applicant. AFA certified that it is not entitled to any points under this criterion. AFA claimed two points for diversity of ownership. UNI certified that it is not entitled to any points under this criterion. UNI and AFA each certified that it is not entitled to any points as a statewide network. With respect to technical parameters, AFA’s proposed 60 dBu contour would encompass 208 square kilometers with a population of 28,764. UNI’s proposed 60 dBu contour would encompass 769 square kilometers with a population of 33,736. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. UNI qualifies for one point and AFA does not qualify for any points under this criterion. Accordingly, UNI is credited with a total of 4 points, and AFA is credited with 2 points. Thus, UNI is the prevailing tentative selectee in Group 970111. A tie-breaker analysis is not necessary.

107. **Group 970113.** This group consists of the mutually exclusive applications of American Family Association (“AFA”) and Great Commission Broadcasting Corp. (“GCBC”). Both applicants propose to serve the community of Kirksville, Missouri. AFA and GCBC each certified that it is not entitled to any points as an established local applicant, for diversity of ownership, or as a statewide network. With respect to technical parameters, AFA’s proposed 60 dBu contour would encompass 1,515 square kilometers with a population of 24,085. GCBC’s proposed 60 dBu contour would encompass 994 square kilometers with a population of 23,391. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies for points under this criterion. Accordingly, PAR and AFA are not credited with any points. Both applications will proceed to a tie-breaker.

108. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. AFA certifies that it has attributable interests in 227 radio authorizations. GCBC certifies that it has attributable interests in 1 radio authorization. GCBC prevails based on this first tie-breaker criterion and is the tentative selectee in Group 970113. The remaining tie-breaker criterion need not be considered.

109. **Group 970209.** This group consists of mutually exclusive applications of WSKG Public Telecommunications Council (“WSKG”) and The Colleges of the Seneca (“Seneca”). Each applicant proposes to serve Ithaca, New York. Each applicant certified that it is not entitled to any points as an established local applicant. Seneca claimed two points for diversity of ownership. WSKG certified that it is not entitled to any points under this criterion. WSKG and Seneca each certified that it is not entitled to any points as a statewide network. With respect to technical parameters, WSKG’s proposed 60 dBu contour would encompass 1,163 square kilometers with a population of 85,712. Seneca’s proposed 60 dBu contour would encompass 762 square kilometers with a population of 78,845. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant qualifies for any points under this criterion. Accordingly, Seneca is credited with a total of 2 points and WSKG is not credited with any points. Thus, Seneca is the prevailing tentative selectee in Group 970209. A tie-breaker analysis is not necessary.

110. **Group 970310.** This group consists of the mutually exclusive applications of Baldwin-Wallace College (“BWC”) and La Cadena Mundial Hispana, Inc. (“La Cadena”). BWC proposes a minor modification to the facilities of WBWC(FM), Berea, Ohio. La Cadena proposes to construct a new NCE station to serve Painesville, Ohio. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. BWC and La Cadena each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

111. BWC and La Cadena each certified that it is entitled to three points as an established local applicant. BWC certified that it is not entitled to points for diversity of ownership. La Cadena claimed two points under this criterion. No applicant claimed points as a statewide network. With respect to technical parameters, the new area covered by BWC’s modified 60 dBu contour would encompass 173 square kilometers with a population of 365,811. La Cadena’s proposed 60 dBu contour would encompass 340 square kilometers with a population of 123,097. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies for points under this criterion. Accordingly, BWC is credited with a total of 3 points and La

Cadena is credited with a total of 5 points. Thus, La Cadena is the prevailing tentative selectee in Group 970310. A tie-breaker analysis is not necessary.

112. **Group 970312.** This group consists of the mutually exclusive applications of Lincoln High School (“Lincoln”), State of Wisconsin, Educational Communications Board (“Wisconsin”), and American Family Association (“AFA”). Lincoln proposes to serve Esko, Minnesota. Wisconsin proposes to serve Superior, Wisconsin. AFA proposes to serve Wentworth, Wisconsin. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. Lincoln, Wisconsin, and AFA each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

113. Lincoln and Wisconsin each claimed three points as an established local applicant. AFA certified that it is not entitled to any points as an established local applicant. Lincoln and AFA each claimed two points for local diversity of ownership. Wisconsin certified that it is not entitled to any points under this criterion. Wisconsin claimed two points as a statewide network. Lincoln and AFA certified that they are not entitled to any points under this criterion. With respect to technical parameters, Lincoln’s proposed 60 dBu contour would encompass 211 square kilometers with a population of 6,985. Wisconsin’s proposed 60 dBu contour would encompass 1,186 square kilometers with a population of 12,719. AFA’s proposed 60 dBu contour would encompass 4,980 square kilometers with a population of 171,375. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. AFA qualifies for two points and the other applicants do not qualify for any points under this criterion. Accordingly, Lincoln and Wisconsin are each credited with a total of 5 points and AFA is credited with 4 points. Thus, AFA is eliminated on the basis of points. Lincoln and Wisconsin will proceed to a tie-breaker.

114. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio authorizations attributable to the applicants. The applicant with the fewest authorizations prevails. Lincoln certifies that it has no attributable interests in any radio authorizations. Wisconsin certifies that it has attributable interests in 16 radio authorizations. Lincoln prevails based on this first tie-breaker criterion and is the tentative selectee in Group 970312. The remaining tie-breaker criterion need not be considered.

115. **Group 970514.** This group consists of the mutually exclusive applications of American Family Association (“AFA”) and Southwest Allen County Schools (“Schools”). AFA proposes to construct a new NCE station to serve New Haven, Indiana. Schools proposes a modification to its licensed station WCYT(FM), Lafayette Township, Indiana. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. AFA and Schools each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

116. Schools claimed three points as an established local applicant. AFA certified that it is not entitled to any points as an established local applicant. Schools and AFA each claimed two points for local diversity of ownership. No applicant claimed points as a statewide network. With respect to technical parameters, AFA’s proposed 60 dBu contour would encompass 340 square kilometers with a population of 84,385. The new area within School’s modified 60 dBu contour would encompass 174

square kilometers with a population of 42,961. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. AFA qualifies for two points and Schools does not qualify for any points under this criterion. Accordingly, AFA is credited with a total of 4 points and Schools is credited with a total of 5 points. Thus, Schools is the prevailing tentative selectee in Group 970514. A tie-breaker analysis is not necessary.

117. **Group 970520.** This group consists of mutually exclusive applications of American Family Association (“AFA”), Florida Public Radio, Inc. (“FPR”), and University of Northern Iowa (“UNI”). AFA and UNI propose to serve Marion, Iowa. FPR proposes to serve Center Point, Iowa. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. AFA, FPR, and UNI each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

118. UNI certified that it qualifies for three points as an established local applicant. AFA and FPR each certified that it is not entitled to any points under this criterion. AFA and FPR each claimed two points for diversity of ownership. UNI certified that it is not entitled to any points under this criterion. No applicant claims points as a statewide network. With respect to technical parameters, AFA’s proposed 60 dBu contour would encompass 1,099 square kilometers with a population of 109,812. FPR’s proposed 60 dBu contour would encompass 1,351 square kilometers with a population of 144,976. UNI’s proposed 60 dBu contour would encompass 691 square kilometers with a population of 136,947. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies for points under this criterion. Accordingly, AFA and FPR are each credited with a total of 2 points. UNI is credited with a total of 3 points. Thus, UNI is the prevailing tentative selectee in Group 970520. A tie-breaker analysis is not necessary.

119. **Group 970630.** This group consists of the mutually exclusive applications of Pinebrook Foundation, Inc. (“PFI”), American Family Association (“AFA”), and Sirius Syncope, Inc. (“SSI”). All applicants propose to serve Peoria, Illinois. PFI and SSI claimed three points as established local applicants. AFA certified that it is not entitled to any points under this criterion. AFA and SSI claimed two points for diversity of ownership. PFI certified that it is not entitled to any points under this criterion. No applicant claimed points as a statewide network. With respect to technical parameters, PFI’s proposed 60 dBu contour would encompass 541 square kilometers with a population of 128,006. AFA’s proposed 60 dBu contour would encompass 486 square kilometers with a population of 172,816. SSI’s proposed 60 dBu contour would encompass 706 square kilometers with a population of 163,199. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies for points under this criterion. Accordingly, PFI is credited with a total of 3 points, AFA with a total of 2 points, and SSI with a total of 5 points. Thus, SSI is the prevailing tentative selectee in Group 960630. A tie-breaker analysis is not necessary.

120. **Group 970631.** This group consists of mutually exclusive applications of St. Gabriel Communications, Ltd. (“St. Gabriel”) and American Family Association (“AFA”). St. Gabriel proposes to serve Ponca, Nebraska. AFA proposes to serve Hubbard, Nebraska. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. St. Gabriel and AFA each certified that it would not qualify for a

Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

121. St. Gabriel certified that it qualifies for three points as an established local applicant. AFA certified that it is not entitled to any points under this criterion. St. Gabriel claimed two points for diversity of ownership. AFA certified that it is not entitled to any points under this criterion. No applicant claimed points as a statewide network. With respect to technical parameters, St. Gabriel's proposed 60 dBu contour would encompass 2,620 square kilometers with a population of 127,774. AFA's proposed 60 dBu contour would encompass 1,699 square kilometers with a population of 123,586. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies for points under this criterion. Accordingly, St. Gabriel is credited with a total of 5 points and AFA is not credited with any points. Thus, St. Gabriel is the prevailing tentative selectee in Group 970631. A tie-breaker analysis is not necessary.

122. **Group 970726.** This group consists of the mutually exclusive applications of JPI Radio, Inc. ("JPI"), CSN International ("CSN"), and Mary V. Harris Foundation ("Harris"). All applicants propose to serve the community of Strasburg, Colorado. JPI, CSN, and Harris each certified that it is not entitled to any points as an established local applicant or as a statewide network, but that it is qualified to receive two points for diversity of ownership. With respect to technical parameters, JPI's proposed 60 dBu contour would encompass 4,813 square kilometers with a population of 10,331. CSN's proposed 60 dBu contour would encompass 4,706 square kilometers with a population of 20,827. Harris's proposed 60 dBu contour would encompass 4,697 square kilometers with a population of 10,141. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies for points under this criterion. Accordingly, JPI, CSN, and Harris are credited with a total of 2 points each. All applications will proceed to a tie-breaker.

123. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. JPI certifies that it has attributable interests in 8 radio authorizations. CSN certifies that it has attributable interests in 572 radio authorizations. Harris certifies that it has attributable interests in 3 radio authorizations. Harris prevails based on this first tie-breaker criterion and is the tentative selectee in Group 970726. The remaining tie-breaker criterion need not be considered.

124. **Group 970730.** This group consists of the mutually exclusive applications of Moody Bible Institute of Chicago ("Moody") and American Family Association ("AFA"). Both applicants propose to serve the community of Missoula, Montana. Moody and AFA each certified that it is not entitled to any points as an established local applicant or as a statewide network. Both claimed two points for local diversity of ownership. With respect to technical parameters, Moody's proposed 60 dBu contour would encompass 6,423 square kilometers with a population of 108,798. AFA's proposed 60 dBu contour would encompass 5,269 square kilometers with a population of 106,123. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies for points under this criterion. Accordingly, Moody and AFA are credited with a total of 2 points each. Both applications will proceed to a tie-breaker.

125. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. Moody certifies that it has attributable interests in 55 radio authorizations. AFA certifies that it has attributable interests in 227 radio authorization. Moody prevails based on this first tie-breaker criterion and is the tentative selectee in Group 970730. The remaining tie-breaker criterion need not be considered.

126. **Group 970738.** This group consists of the mutually exclusive applications of Public Broadcasting of Colorado, Inc. (“PBC”) and Denver Educational Broadcasting, Inc. (“DEB”). Both applicants propose to serve the community of Vail, Colorado. PBC and DEB each certified that it is not entitled to any points as an established local applicant, for local diversity of ownership, or as a statewide network. DEB later sought to amend its submission to claim two points for local diversity of ownership, but as discussed *supra*, we have rejected DEB’s claim.¹⁹⁰ With respect to technical parameters, PBC’s proposed 60 dBu contour would encompass 1,850 square kilometers with a population of 17,278.¹⁹¹ DEB’s proposed 60 dBu contour would encompass 1,918 square kilometers with a population of 33,701. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies for points under this criterion. Accordingly, neither PBC nor DEB is credited with any points. Both applications will proceed to a tie-breaker.

127. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. PBC certifies that it has attributable interests in 21 radio authorizations. DEB certifies that it has an attributable interest in 1 radio authorization. DEB prevails based on this first tie-breaker criterion and is the tentative selectee in Group 970738. The remaining tie-breaker criterion need not be considered.

128. **Group 970815.** This group consists of the mutually exclusive applications of Okaloosa Public Radio (“Okaloosa”) and American Family Association (“AFA”). Both applicants propose to serve the community of Monroeville, Alabama. Okaloosa and AFA each certified that it is not entitled to any points as an established local applicant. Okaloosa claimed two points for local diversity of ownership. AFA certified that it is not entitled to any points under this criterion. Neither applicant claims points as a statewide network. With respect to technical parameters, Okaloosa’s proposed 60 dBu contour would encompass 5,785 square kilometers with a population of 48,159. AFA’s proposed 60 dBu contour would encompass 6,475 square kilometers with a population of 68,445. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. AFA qualifies for one point and Okaloosa does not qualify for any points under this criterion. Accordingly, Okaloosa is credited with a total of 2 points and AFA is credited with a total of 1 point. Thus, Okaloosa is the prevailing tentative selectee in Group 970815. A tie-breaker analysis is not necessary.

129. **Group 970823.** This group originally consisted of the mutually exclusive applications of American Family Association (“AFA”), Spokane Public Radio (“SPR”), and Mary V. Harris Foundation (“Harris”). As discussed *supra*, Harris’ application has been dismissed for failure to file a timely point supplement.¹⁹² Therefore, our point system analysis is limited to AFA and SPR. AFA proposes to serve the community of Rathdrum, Idaho. SPR proposes to serve Spokane, Washington. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. AFA and SPR each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

¹⁹⁰ See *supra* ¶¶ 42-43.

¹⁹¹ As discussed *supra* at note 115, we will not accept PBC’s attempt to claim service to a larger population based on census information that became available to it after the snapshot date.

¹⁹² See *supra* Section ¶¶ 15-16.

130. SPR certified that it is eligible for three points as an established local applicant. AFA certified that it is not entitled to any points under this criterion. AFA claimed two points for local diversity of ownership. SPR certified that it is not entitled to any points under this criterion. No applicant claimed points as a statewide network. With respect to technical parameters, AFA's proposed 60 dBu contour would encompass 2,813 square kilometers with a population of 466,668. SPR's proposed 60 dBu contour would encompass 2,525 square kilometers with a population of 368,732. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. AFA qualifies for one point under this criterion. Accordingly, AFA and SPR are each credited with a total of 3 points. Both applications will proceed to a tie-breaker.

131. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. AFA certifies that it has attributable interests in 227 radio authorizations. SPR certifies that it has attributable interests in 9 radio authorizations. SPR prevails based on this first tie-breaker criterion and is the tentative selectee in Group 970823. The remaining tie-breaker criterion need not be considered.

132. **Group 970928.** This group consists of the mutually exclusive applications of American Family Association ("AFA") and Empire Broadcasting, Inc. ("Empire"). Both applicants propose to serve the community of Buras, Louisiana. AFA and Empire each certified that it is not entitled to any points as an established local applicant. Empire claimed two points for local diversity of ownership. AFA certified that it is not entitled to any points under this criterion. Neither applicant claimed points as a statewide network. With respect to technical parameters, AFA's proposed 60 dBu contour would encompass 670 square kilometers with a population of 7,850. Empire's proposed 60 dBu contour would encompass 862 square kilometers with a population of 9,099. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Empire qualifies for one point under this criterion. Accordingly, Empire is credited with a total of 3 points and AFA is not credited with any points. Thus, Empire is the prevailing tentative selectee in Group 970928. A tie-breaker analysis is not necessary.

133. **Group 97091E.** This group consists of mutually exclusive applications of Upper Columbia Media Association ("UCMA") and Living Faith Fellowship Educational Ministries ("LFF"). UCMA proposes to serve Clarkston, Washington. LFF proposes to serve Asotin, Washington. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. UCMA and LFF each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

134. UCMA certified that it qualifies for three points as an established local applicant based on the qualifications of a related company. As discussed *supra*, we have determined that UCMA does not meet the exact definition of established local applicant and, therefore, that it will receive no points under this criterion.¹⁹³ LFF certified that it is not entitled to any points under this criterion. UCMA and LFF claimed two points each for diversity of ownership. No applicant claimed points as a statewide network. With respect to technical parameters, UCMA's proposed 60 dBu contour would encompass 767 square kilometers with a population of 52,256. LFF's proposed 60 dBu contour would encompass 187 square kilometers with a population of 30,079. One technical point is awarded to the applicant that serves at

¹⁹³ See *supra* ¶¶ 38 -39.

least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. UCMA qualifies for two points under this criterion. Accordingly, UCMA is credited with a total of 4 points. LFF is credited with a total of 2 points. Thus, UCMA is the prevailing tentative selectee in Group 97091E. A tie-breaker analysis is not necessary.¹⁹⁴

135. **Group 971015.** This group consists of the mutually exclusive applications of American Family Association (“AFA”) and Marshalltown Education Plus, Inc. (“MEP”). Both applicants propose to serve the community of Marshalltown, Iowa. MEP certified that it is eligible for three points as an established local applicant. AFA certified that it is not entitled to any points under this criterion. AFA claimed two points for local diversity of ownership. MEP certified that it is not entitled to any points under this criterion. Neither applicant claims points as a statewide network. With respect to technical parameters, AFA’s proposed 60 dBu contour would encompass 415 square kilometers with a population of 30,232. MEP’s proposed 60 dBu contour would encompass 1,041 square kilometers with a population of 34,832. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. MEP qualifies for one point under this criterion. Accordingly, AFA is credited with a total of 2 points and MEP is credited with a total of 4 points. Thus, MEP is the prevailing tentative selectee in Group 971015. A tie-breaker analysis is not necessary.

136. **Group 971019.** This group consists of the mutually exclusive applications of American Family Association (“AFA”), Family Stations, Inc. (“FSI”), and Temple University of the Commonwealth of Pennsylvania (“Temple”). Each applicant propose to serve the community of Coatesville, Pennsylvania. Temple certified that it is eligible for three points as an established local applicant. AFA and FSI each certified that it is not entitled to any points under this criterion. FSI and Temple claimed two points each for local diversity of ownership. AFA certified that it is not entitled to any points under this criterion. No applicant claimed points as a statewide network. With respect to technical parameters, AFA’s proposed 60 dBu contour would encompass 334 square kilometers with a population of 90,040. FSI’s proposed 60 dBu contour would encompass 280 square kilometers with a population of 81,615. Temple’s proposed 60 dBu contour would encompass 596 square kilometers with a population of 131,789. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Temple qualifies for two points and the other applicants do not qualify for any points under this criterion. Accordingly, Temple is credited with a total of 7 points. FSI is credited with a total of 2 points. AFA is not credited with any points. Thus, Temple is the prevailing tentative selectee in Group 971019. A tie-breaker analysis is not necessary.

137. **Group 980111.** This group consists of the mutually exclusive applications of American Family Association (“AFA”) and Minn-Iowa Christian Broadcasting Foundation (“MICB”). Both applicants propose to serve the community of New Ulm, Minnesota. AFA and MICB each certified that it is not entitled to any points as an established local applicant or as a statewide network. Both claimed two points for local diversity of ownership. With respect to technical parameters, AFA’s proposed 60 dBu contour would encompass 262 square kilometers with a population of 16,334. MICB’s proposed 60 dBu contour would encompass 369 square kilometers with a population of 16,905. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies for points under this criterion. Accordingly, AFA and MICB are credited with a total of 2 points each. Both applications will proceed to a tie-breaker.

¹⁹⁴ As discussed previously, UCM’s waiver request concerning tie-breakers thus need not be considered. *See supra* at note 32.

138. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. MICB certifies that it has attributable interests in 4 radio authorizations. AFA certifies that it has attributable interests in 227 radio authorization. MICB prevails based on this first tie-breaker criterion and is the tentative selectee in Group 980111. The remaining tie-breaker criteria need not be considered.

139. **Group 980301.** This group originally consisted of the applications of Richland Center Fellowship (“RCF”) and State of Wisconsin Educational Communications Board (“WECB”). As discussed *supra*, the staff dismissed RCF’s application for failure to file a timely point supplement, and we have affirmed that action on review.¹⁹⁵ Accordingly, a point system analysis is not necessary. WECB, the sole remaining applicant, can be processed as a singleton.

140. **Group 98033P.** This group consists of the mutually exclusive applications of American Family Association (“AFA”) and Radio Training Network, Inc. (“RTN”). Both applicants propose to serve the community of Hickory, North Carolina. AFA and RTN each certified that it is not entitled to any points as an established local applicant or as a statewide network. Both claimed two points for local diversity of ownership. With respect to technical parameters, AFA’s proposed 60 dBu contour would encompass 518 square kilometers with a population of 106,232. RTN’s proposed 60 dBu contour would encompass 345 square kilometers with a population of 91,647. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. AFA qualifies for one point under this criterion. Accordingly, AFA is credited with a total of 3 points and RTN is credited with a total of 2 points. Thus, AFA is the prevailing tentative selectee in Group 98033P. A tie-breaker analysis is not necessary.

141. **Group 9803HL.** This group consists of the mutually exclusive applications of Coos Bay School District 9 (“CBSD”) and Family Stations, Inc. (“FSI”). Both applicants propose to serve Coos Bay, Oregon. CBSD claimed three points as an established local applicant. FSI certified that it is not entitled to any points under this criterion. FSI claimed two points for diversity of ownership based on a pledge to request cancellation of its license for translator station K219CK, Coos Bay, Oregon upon the commencement of operation of the proposed full service station.¹⁹⁶ PFI certified that it is not entitled to any points under this criterion. No applicant claimed points as a statewide network. With respect to technical parameters, CBSD’s proposed 60 dBu contour would encompass 678 square kilometers with a population of 37,889. FSI’s proposed 60 dBu contour would encompass 874 square kilometers with a population of 35,461. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant in this group qualifies for points under this criterion. Accordingly, CBSD is credited with a total of 3 points and FSI is credited with a total of 2 points. Thus, CBSD is the prevailing tentative selectee in Group 9803HL. A tie-breaker analysis is not necessary.

142. **Group 980401.** This group consists of mutually exclusive applications of American Family Association (“AFA”), Educational Communications of Colorado Springs (“ECCS”), Colorado Christian University (“CCU”), and University of Wyoming (“UW”). Each applicant proposes to serve Laramie, Wyoming. UW certified that it qualifies for three points as an established local applicant. AFA, ECCS, and CCU each certified that it is not entitled to any points under this criterion. AFA and ECCS claimed two points each for local diversity of ownership. CCU and UW each certified that it is not entitled to any points under this criterion. No applicant claimed points as a statewide network. With respect to technical parameters, AFA’s proposed 60 dBu contour would encompass 972 square kilometers

¹⁹⁵ See *supra*, ¶¶ 17-20.

¹⁹⁶ See FSI’s Point Supplement, Question IV(2)(b) and Exhibit S-1. See *supra*, ¶ 46.

with a population of 30,007. ECCS's proposed 60 dBu contour would encompass 973 square kilometers with a population of 30,116. CCU's proposed 60 dBu contour would encompass 1,720 square kilometers with a population of 30,299. UW's proposed 60 dBu contour would encompass 1,005 square kilometers with a population of 30,007. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies for points under this criterion. Accordingly, AFA and ECCS are each credited with a total of 2 points. CCU is not credited with any points. UW is credited with a total of 3 points. Thus, UW is the prevailing tentative selectee in Group 980401. A tie-breaker analysis is not necessary.

143. **Group 980404.** This group consists of the mutually exclusive applications of American Family Association ("AFA") and Cornerstone Baptist Educational Ministries, Inc. ("CBEM"). Both applicants propose to serve the community of Benton Harbor, Michigan. AFA and CBEM each certified that it is not entitled to any points as an established local applicant, for diversity of ownership, or as a statewide network. With respect to technical parameters, AFA's proposed 60 dBu contour would encompass 419 square kilometers with a population of 73,839. CBEM's proposed 60 dBu contour would encompass 449 square kilometers with a population of 74,709. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant in this group qualifies for points under this criterion. Accordingly, neither applicant is credited with any points. Both applications will proceed to a tie-breaker.

144. The first issue considered in a tie-breaker for NCE-FM applicants is the number of radio authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. CBEM certified that it has attributable interests in 4 radio authorizations. AFA certified that it has attributable interests in 227 radio authorizations. CBEM prevails based on this first tie-breaker criterion and is the tentative selectee in Group 980404. The remaining tie-breaker criteria need not be considered.

145. **Group 980415.** This group originally consisted of the mutually exclusive applications of Pioneer Public Broadcasting ("Pioneer"), Selah Corporation ("Selah"), and Mary V. Harris Foundation ("Harris"). As discussed *supra*, Harris' application has been dismissed for failure to file a timely point supplement.¹⁹⁷ Therefore, our point system analysis is limited to Pioneer and Selah. Pioneer proposes to serve the community of Fargo, North Dakota. Selah proposes to serve Horace, North Dakota. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. Pioneer and Selah each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

146. Selah and Pioneer each certified that it is eligible for three points as an established local applicant. However, as discussed *supra*, we have determined that Pioneer cannot be considered "established" and thus is not entitled to any points under this criterion.¹⁹⁸ Pioneer and Selah claimed two points each for local diversity of ownership. No applicant claimed points as a statewide network. With respect to technical parameters, Pioneer's proposed 60 dBu contour would encompass 2,353 square kilometers with a population of 153,432. Selah's proposed 60 dBu contour would encompass 1,789 square kilometers with a population of 155,115. One technical point is awarded to the applicant that

¹⁹⁷ See *supra* ¶¶ 15-16.

¹⁹⁸ See *supra* ¶ 40.

serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant qualifies for any points under this criterion. Accordingly, Pioneer is credited with a total of 2 points and Selah is credited with a total of 5 points. Thus, Selah is the prevailing tentative selectee in Group 980415.¹⁹⁹ A tie-breaker analysis is not necessary.

147. **Group 98043S.** This group consists of the mutually exclusive applications of American Family Association (“AFA”) and University of Kentucky (“UK”). AFA proposes to construct a new NCE station to serve Frankfort, Kentucky. UK proposes a modification to the facilities of WRFL(FM), Lexington, Kentucky. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. AFA and UK each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

148. UK certified that it is entitled to 3 points as an established local applicant. AFA certified that it is not entitled to any points under this criterion. UK certified that it is not entitled to points for diversity of ownership. AFA claimed two points under this criterion. No applicant claimed points as a statewide network. With respect to technical parameters, the new area covered by UK’s modified 60 dBu contour would encompass 899 square kilometers with a population of 54,233. AFA’s proposed 60 dBu contour would encompass 360 square kilometers with a population of 43,565. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. UK qualifies for one point under this criterion. Accordingly, AFA is credited with a total of 2 points, and UK is credited with a total of 4 points. Thus, UK is the prevailing tentative selectee in Group 98043S. A tie-breaker analysis is not necessary.

149. **Group 980510.** This group consists of the mutually exclusive applications of Central Florida Education Foundation, Inc. (“Central”), CSN International (“CSN”), and Florida Public Radio, Inc. (“FPR”). Central proposes a minor modification to the facilities of WPOZ(FM), Union Park, Florida. CSN and FPR propose to construct a new NCE stations to serve Cape Canaveral, Florida. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. CSN and FPR each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. As discussed *supra*, Central argued that it should receive a Section 307(b) preference although it would not meet the ten percent threshold. We have denied the waiver request.²⁰⁰ The applications, therefore, proceed to a point hearing.

¹⁹⁹ On November 4, 1999, Forum Communications Company (“Forum”), licensee of Station WDAY-TV, Fargo, North Dakota, filed a Petition to Deny the Selah application. Forum alleges that Selah’s proposal would cause interference to WDAY-TV in excess of that permitted by Section 73.525 of the Commission’s Rules. In responsive documents, Forum and Selah dispute each other’s methodology. These Commission interference requirements are not considered at this stage of the proceeding. We will dismiss Forum’s petition and the pleadings responding thereto, without prejudice to any further submissions the parties may file in response to a public notice identifying Selah as a tentative selectee.

²⁰⁰ See *supra* ¶¶ 28-30.

150. Central and FPR each certified that it is entitled to three points as an established local applicant. CSN certified that it is not entitled to any points under this criterion. Central, CSN, and FPR each claimed two points certified for diversity of ownership. No applicant claimed points as a statewide network. With respect to technical parameters, the new area covered by Central's modified 60 dBu contour would encompass 1170 square kilometers with a population of 265,931. CSN's proposed 60 dBu contour would encompass 416 square kilometers with a population of 16,649. FPR's proposed 60 dBu contour would encompass 68 square kilometers with a population of 31,633. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Central qualifies for two points, and neither CSN nor FPR qualifies for any points under this criterion.²⁰¹ Accordingly, Central is credited with a total of 7 points. CSN is credited with a total of 2 points. FPR is credited with a total of 5 points. Thus, Central is the prevailing tentative selectee in Group 980510. A tie-breaker analysis is not necessary.

151. **Group 980605.** This group consists of mutually exclusive applications of Salt and Light Communications, Inc. ("S&L"), Iowa State University of Science and Technology ("Iowa State"), and Family Stations, Inc. ("FSI"). Each applicant proposes to serve Oskaloosa, Iowa. Iowa State certified that it qualifies for three points as an established local applicant. S&L and FSI each certified that it is not entitled to any points under this criterion. Each applicant claimed two points for local diversity of ownership. No applicant claimed points as a statewide network. With respect to technical parameters, S&L's proposed 60 dBu contour would encompass 411 square kilometers with a population of 15,459. Iowa State's proposed 60 dBu contour would encompass 1,190 square kilometers with a population of 21,654. FSI's proposed 60 dBu contour would encompass 2,792 square kilometers with a population of 41,618. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. FSI qualifies for two points under this criterion. Accordingly, S&L is credited with a total of 2 points. Iowa State is credited with a total of 5 points. FSI is credited with a total of 4 points. Thus, Iowa State is the prevailing tentative selectee in Group 980605. A tie-breaker analysis is not necessary.

152. **Group 980609.** This group consists of the mutually exclusive applications of Community Public Radio, Inc. ("CPR") and Family Stations, Inc. ("FSI"). Both applicants propose to serve the community of LaGrange, Georgia. CPR and FSI each certified that it is not entitled to any points as an established local applicant or as a statewide network. FSI claimed two points for local diversity of ownership based on a pledge to request cancellation of its license for translator station W220AN, La Grange, Georgia upon commencement of operation of its proposed full service station.²⁰² CPR certified that it is not eligible for any points under this criterion. With respect to technical parameters, CPR's proposed 60 dBu contour would encompass 936 square kilometers with a population of 49,595. FSI's proposed 60 dBu contour would encompass 352 square kilometers with a population of 37,636. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. CPR qualifies for two points under this criterion. Accordingly, CPR and FSI are credited with a total of 2 points each. Both applications will proceed to a tie-breaker.

153. The first issue considered in a tie-breaker for NCE-FM applicants is the number of radio authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. CPR certified that it has attributable interests in 10 radio authorizations. FSI certified that it has attributable

²⁰¹ For purpose of this determination, we compared Central's "best" technical proposal to the next best area of CSN and the next best population of FPR. *See supra*, ¶¶ 50-51.

²⁰² *See* FSI's Point Supplement, Question IV(2)(b) and associated Exhibit. *See supra* ¶ 46.

interests in 176 radio authorizations. CPR prevails based on this first tie-breaker criterion and is the tentative selectee in Group 980609. The remaining tie-breaker criterion need not be considered.

154. **Group 980616.** This group consists of mutually exclusive applications of Christian Educational Association (“CEA”), Daystar Public Radio, Inc. (“Daystar”), Good Idea, Inc. (“Good”), Pathway Public Radio, Inc. (“Pathway”), Community Public Radio, Inc. (“CPR”), and Central Florida Educational Foundation, Inc. (“Central”). CEA proposes to serve Favorita, Florida. Daystar and Pathway propose to serve Favoretta, Florida. Good and CPR propose to serve Beverly Beach, Florida. Central proposes to serve Palm Coast, Florida. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. As discussed *supra*, each of the applicants claimed a preference on this basis. Four, however, are eliminated on a comparative basis. CEA is eliminated because its certification appeared to have been based erroneously on the inclusion of population already receiving service from two or more authorized NCE stations. CPR is eliminated because it certified that it was not entitled to a preference based on first service alone. Good and Pathway are eliminated because each proposes to provide a first local service to at least 5,000 fewer potential listeners than either Daystar or Central.²⁰³ Also, as discussed *supra*, the remaining applicants, Daystar and Central, would provide first and second services that would be comparable to each other in terms of area and population.²⁰⁴ Daystar and Central must proceed to a point hearing.

155. Daystar and Central each certified that it is not entitled to any points as an established local applicant. Daystar and Central each claimed two points for diversity of ownership. Neither of the applicants claimed points as a statewide network. With respect to technical parameters, Daystar’s proposed 60 dBU contour encompasses 521 square kilometers with a population of 51,773. As discussed *supra*, Central submitted no data, and we have, therefore, awarded the maximum award of two technical points to Daystar.²⁰⁵ Accordingly, Daystar is credited with a total of 4 points, and Central is credited with a total of 2 points. Thus, Daystar is the prevailing tentative selectee in Group 980616.²⁰⁶ A tie-breaker analysis is not necessary.

156. **Group 980619.** This group consists of the mutually exclusive applications of Salt and Light Communications, Inc. (“S&L”) and Educational Communications of Colorado Springs (“ECCS”). Both applicants propose to serve the community of Laramie, Wyoming. S&L and ECCS each certified that it is not entitled to any points as an established local applicant or as a statewide network. ECCS claimed two points for local diversity of ownership. S&L certified that it is not entitled to any points under this criterion. With respect to technical parameters, S&L’s proposed 60 dBU contour would

²⁰³ See *supra*, ¶¶ 24 -25.

²⁰⁴ *Id.*

²⁰⁵ See *supra* ¶ 49.

²⁰⁶ On July 17, 2001, Post-Newsweek Stations, Orlando, Inc., (“Post”) licensee of Station WKMG-TV, Orlando, Florida, filed an Informal Objection to the Daystar application. Post alleges that Daystar’s proposal would cause interference to WKMG-TV in excess of that permitted by Section 73.525 of the Rules. In responsive documents, Daystar and Post dispute each other’s methodology. An argument submitted by Central in its own point supplement similarly alleges that Daystar’s amended proposal violates Section 73.525 with respect to WKMG-TV and also alleges prohibited overlap with another station. Compliance with these Commission interference requirements is not considered at this stage of a proceeding. We will dismiss Post’s objection, the pleadings responding thereto, and the interference argument raised by Central without prejudice to any further submissions the parties may file in response to a public notice identifying Daystar as a tentative selectee. If petitions are filed in response to that public notice, the staff would consider any issues raised therein in determining whether Daystar’s application is grantable.

encompass 961 square kilometers with a population of 30,007. ECCS's proposed 60 dBu contour would encompass 973 square kilometers with a population of 30,116. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant qualifies for any points under this criterion. Accordingly, ECCS is credited with a total of 2 points and S&L is not credited with any points. Thus, ECCS is the prevailing tentative selectee in Group 980619. A tie-breaker analysis is not necessary.

157. **Group 9806PP.** This group consists of the mutually exclusive applications of Christian Educational Association ("CEA") and Houston Christian Broadcasters, Inc. ("HCB"). Both applicants propose to serve the community of Sealy, Texas. CEA and HCB each certified that it is not entitled to any points as an established local applicant, for local diversity of ownership, or as a statewide network. With respect to technical parameters, CEA's proposed 60 dBu contour would encompass 771 square kilometers with a population of 11,658. HCB's proposed 60 dBu contour would encompass 1,597 square kilometers with a population of 21,290. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. HCB qualifies for two points under this criterion. Accordingly, HCB is credited with a total of 2 points and CEA is not credited with any points. Thus, HCB is the prevailing tentative selectee in Group 9806PP. A tie-breaker analysis is not necessary.

158. **Group 980704.** This group consists of the mutually exclusive applications of William Jewell College ("WJC") and Community Broadcasting, Inc. ("CBI"). CBI proposes to construct a new NCE station to serve Lake Lootawana, Missouri. WJC proposes a major modification to the facilities of KWJC(FM), Liberty, Missouri. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. WJC and CBI each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

159. WJC certified that it is entitled to three points as an established local applicant. CBI certified that it is not entitled to any points under this criterion. WJC and CBI each certified that it is not entitled to any points for diversity of ownership or as a statewide network. With respect to technical parameters, the new area covered by WJC's modified 60 dBu contour would encompass 608 square kilometers with a population of 198,960.²⁰⁷ CBI's proposed 60 dBu contour would encompass 919 square kilometers with a population of 21,838. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant qualifies for any points under this criterion. Accordingly, WJC is credited with a total of 3 points and CBI is not credited with any points. Thus, WJC is the prevailing tentative selectee in Group 980704. A tie-breaker analysis is not necessary.

160. **Group 980801.** This group consists of the mutually exclusive applications of VCY America, Inc. ("VCY") and Friends of Radio Maria, Inc. ("Friends"). VCY proposes to serve the community of Sturgeon Bay, Wisconsin. Friends proposes to serve Peshtigo, Wisconsin. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. VCY and Friends each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent

²⁰⁷ As noted *supra*, these numbers reflect WJC amendment to correct an error in which it overstated the population served.

of the population within its respective service area. The applications, therefore, proceed to a point hearing.

161. VCY and Friends each certified that it is not entitled to any points as an established local applicant or as a statewide network. Friends claimed two points for local diversity of ownership. VCY certified that it is not entitled to any points under this criterion. With respect to technical parameters, VCY's 60 dBu contour would encompass 1,477 square kilometers with a population of 59,220. Friend's proposed 60 dBu contour would encompass 1,464 square kilometers with a population of 58,977. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant qualifies for any points under this criterion. Accordingly, Friends is credited with a total of 2 points and VCY is not credited with any points. Thus, Friends is the prevailing tentative selectee in Group 980801. A tie-breaker analysis is not necessary.

162. **Group 980805.** This group consists of mutually exclusive applications of University of Wyoming ("UW"), Educational Communications of Colorado Springs ("ECCS"), and WCN, Inc. ("WCN"). Each applicant proposes to serve Laramie, Wyoming. UW certified that it qualifies for three points as an established local applicant. ECCS and WCN each certified that it is not entitled to any points under this criterion. ECCS claimed two points for local diversity of ownership. UW and WCN each certified that it is not eligible for any points under this criterion. No applicant claimed points as a statewide network. With respect to technical parameters, UW's proposed 60 dBu contour would encompass 1,186 square kilometers with a population of 30,158. ECCS's proposed 60 dBu contour would encompass 973 square kilometers with a population of 30,116. WCN's proposed 60 dBu contour would encompass 158 square kilometers with a population of 28,385. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. None of the applicants in this group qualify for any points under this criterion. Accordingly, UW is credited with a total of 3 points. ECCS is credited with a total of 2 points. WCN is not credited with any points. Thus, UW is the prevailing tentative selectee in Group 980805. A tie-breaker analysis is not necessary.

163. **Group 980815.** This group consists of the mutually exclusive applications of Kids First, Inc. ("KFI") and Mary V. Harris Foundation ("Harris"). KFI proposes to serve the community of Zionsville, Indiana. Harris proposes to serve Jamestown, Indiana. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. KFI and Harris each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

164. KFI claimed three points as an established local applicant. Harris certified that it is not eligible to receive any points under this criterion. Both applicants claimed two points for diversity of ownership. Neither applicant claimed points as a statewide network. With respect to technical parameters, KFI's 60 dBu contour would encompass 1,018 square kilometers with a population of 60,865. Harris's proposed 60 dBu contour would encompass 1,806 square kilometers with a population of 174,177. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Harris qualifies for two points under this criterion. Accordingly, KFI is credited with a total of 5 points, and Harris is credited with a total of 4 points. Thus, KFI is the prevailing tentative selectee in Group 980815. A tie-breaker analysis is not necessary.

165. **Group 980902.** This group consists of the mutually exclusive applications of CCS Radio, Inc. ("CCS") and Friends of Radio Maria ("Friends"). CCS proposes to serve the community of

Beaumont, Texas. Friends proposes to serve Vidor, Texas. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. CCS and Friends each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

166. CCS and Friends each certified that it is not eligible to receive any points as an established local applicant or as a statewide network. CCS claimed two points for diversity of ownership. Friends certified that it is not eligible to receive any points under this criterion. With respect to technical parameters, CCS's 60 dBu contour would encompass 3,794 square kilometers with a population of 290,491. Friends's proposed 60 dBu contour would encompass 3,861 square kilometers with a population of 364,237. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant qualifies for any points under this criterion. Accordingly, CCS is credited with a total of 2 points and Friends is not credited with any points. Thus, CCS is the prevailing tentative selectee in Group 980902. A tie-breaker analysis is not necessary.

167. **Group 980910.** This group consists of the mutually exclusive applications of American Family Association ("AFA") and Minn-Iowa Christian Broadcasting, Inc. ("MICB"). Both applicants propose to serve the community of Windom, Minnesota. AFA and MICB each certified that it is not eligible to receive any points as an established local applicant or as a statewide network. MICB claimed two points for diversity of ownership. AFA certified that it is not eligible to receive any points under this criterion. With respect to technical parameters, AFA's 60 dBu contour would encompass 251 square kilometers with a population of 5,584. MICB's proposed 60 dBu contour would encompass 4,809 square kilometers with a population of 31,225. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. MICB qualifies for two points under this criterion. Accordingly, MICB is credited with a total of 4 points and AFA is not credited with any points. Thus, MICB is the prevailing tentative selectee in Group 980910. A tie-breaker analysis is not necessary.

168. **Group 981003.** This group consists of the mutually exclusive applications of Henderson State University ("HSU") and Bright Light Broadcasting, Inc. ("BLB"). Both applicants propose to serve the community of Arkadelphia, Arkansas. HSU claimed three points as an established local applicant. BLB certified that it is not eligible to receive points under this criterion. HSU and BLB both claimed two points for diversity of ownership. HSU's diversity of ownership claim was based on its pledge to seek cancellation of its licensed Class D station KSWH-FM, Arkadelphia, Arkansas upon commencement of operation of the proposed full service station.²⁰⁸ As discussed *supra*, we have granted a rule waiver to permit HSU to claim diversity of ownership points under those circumstances.²⁰⁹ No applicant claimed points as a statewide network. With respect to technical parameters, HSU's 60 dBu contour would encompass 214 square kilometers with a population of 12,614. BLB's proposed 60 dBu contour would encompass 323 square kilometers with a population of 14,573. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. BLB qualifies for one point under this criterion. Accordingly, HSU is credited with a total of 5 points, and BLB is credited with a total of 3 points. Thus, HSU is the prevailing tentative selectee in Group 981003. A tie-breaker analysis is not necessary.

²⁰⁸ See HSU's Point Supplement, Question IV(2)(b) and associated Exhibit.

²⁰⁹ See *supra* ¶¶ 46-47.

169. **Group 981005.** This group consists of the mutually exclusive applications of Greater Mississippi Broadcasting, Inc. (“GMB”), American Family Association (“AFA”), Bible Broadcasting Network, Inc. (“BBN”), and Friends of Radio Maria, Inc. (“Friends”). GMB, AFA, and BBN propose to serve the community of Biloxi, Mississippi. Friends proposes to serve D’Iberville, Mississippi. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. Each of the applicants certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

170. Each of the applicants in this group certified that it is not entitled to any points as an established local applicant or statewide network. GMB, BBN, and Friends each claimed two points for diversity of ownership. AFA certified that it is not entitled to points under this criterion. With respect to technical parameters, GMB’s proposed 60 dBu contour would encompass 426 square kilometers with a population of 83,095. AFA’s proposed 60 dBu contour would encompass 258 square kilometers with a population of 71,561. BBN’s proposed 60 dBu contour would encompass 366 square kilometers with a population of 89,720. Friends’s proposed 60 dBu contour would encompass 495 square kilometers with a population of 104,171. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Friends qualifies for one point under this criterion.²¹⁰ Accordingly, GMB and BBN are credited with a total of 2 points each, Friends with a total of 3 points, and AFA with no points. Thus, Friends is the prevailing tentative selectee in Group 981005. A tie-breaker analysis is not necessary.

171. **Group 981010.** This group consists of the mutually exclusive applications of Solid Rock Broadcasting, Inc. (“SRB”) and Billings Community Cable Corporation (“BCC”). Both applicants propose to serve the community of Billings, Montana. BCC claimed three points as an established local applicant. SRB certified that it is not eligible to receive any points under this criterion. SRB and BCC both claimed two points for diversity of ownership. Neither applicant claimed points as a statewide network. With respect to technical parameters, SRB’s 60 dBu contour would encompass 572 square kilometers with a population of 109,259. BCC’s proposed 60 dBu contour would encompass 1,930 square kilometers with a population of 123,795. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. BCC qualifies for one point under this criterion. Accordingly, SRB is credited with a total of 2 points and BCC is credited with a total of 6 points. Thus, BCC is the prevailing tentative selectee in Group 981010. A tie-breaker analysis is not necessary.

172. **Group 981106.** This group consists of the mutually exclusive applications of Houston Christian Broadcasters, Inc. (“HCB”) and Christian Education Association (“CEA”). Both applicants propose to serve the community of Camp Wood, Texas. Neither applicant claimed any points as an established local applicant or as a statewide network. HCB claimed two points for diversity of ownership. CEA certified that it is not eligible to receive any points under this criterion. With respect to technical parameters, HCB’s 60 dBu contour would encompass 844 square kilometers with a population of 1,945. CEA’s proposed 60 dBu contour would encompass 1,186 square kilometers with a population of 1,685. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant qualifies for any points under this criterion. Accordingly, HCB is

²¹⁰ For purpose of this determination, we compared Friends’s “best” technical proposal to the next best area of GMB and the next best population of BBN. *See supra*, ¶ 51

credited with a total of 2 points and CEA is not credited with any points. Thus, HCB is the prevailing tentative selectee in Group 981106. A tie-breaker analysis is not necessary.

173. **Group 981209.** This group consists of the mutually exclusive applications of VCY America, Inc. (“VCY”) and Family Stations, Inc. (“FSI”). Both applicants propose to serve the community of Janesville, Wisconsin. Neither applicant claimed any points as an established local applicant or as a statewide network. FSI claimed two points for diversity of ownership. VCY certified that it is not eligible to receive any points under this criterion. With respect to technical parameters, VCY’s 60 dBu contour would encompass 816 square kilometers with a population of 88,441. FSI’s proposed 60 dBu contour would encompass 1,244 square kilometers with a population of 106,650. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. FSI qualifies for one point under this criterion. Accordingly, FSI is credited with a total of 3 points and VCY is not credited with any points. Thus, FSI is the prevailing tentative selectee in Group 981209. A tie-breaker analysis is not necessary.

174. **Group 981212.** This group consists of the mutually exclusive applications of Pennyrite Christian Communications, Inc. (“PCC”) and Indiana Community Radio Corporation (“ICR”). Both applicants propose to serve the community of Madisonville, Kentucky. Neither applicant claimed any points as an established local applicant or as a statewide network. PCC and ICR each certified that it is eligible to receive two points for diversity of ownership. PCC’s certification was based on its pledge to request cancellation of the license of translator station W219CF, Madisonville, Kentucky, upon commencement of operations of the proposed full service station.²¹¹ With respect to technical parameters, PCC’s 60 dBu contour would encompass 371 square kilometers with a population of 26,972. ICR’s proposed 60 dBu contour would encompass 445 square kilometers with a population of 30,274. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. ICR qualifies for one point under this criterion. Accordingly, PCC is credited with a total of 2 points and ICR is credited with a total of 3 points. Thus, ICR is the prevailing tentative selectee in Group 981212. A tie-breaker analysis is not necessary.

175. **Group 990101.** This group consists of the mutually exclusive applications of University of Northern Iowa (“UNI”) and Solid Rock Broadcasting, Inc. (“SRB”). Both applicants propose to serve the community of Oskaloosa, Iowa. UNI claimed three points as an established local applicant. SRB certified that it is not eligible to receive any points under this criterion. SRB claimed two points for diversity of ownership. UNI certified that it is not eligible to receive any points under this criterion. Neither applicant claimed points as a statewide network. With respect to technical parameters, UNI’s 60 dBu contour would encompass 596 square kilometers with a population of 16,286. SRB’s proposed 60 dBu contour would encompass 511 square kilometers with a population of 16,032. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant qualifies for any points under this criterion. Accordingly, UNI is credited with a total of 3 points and SRB is credited with a total of 2 points. Thus, UNI is the prevailing tentative selectee in Group 990101. A tie-breaker analysis is not necessary.

176. **Group 990109.** This group consists of the mutually exclusive applications of Upper Columbia Media Corporation (“UCM”) and Moody Bible Institute of Chicago (“Moody”).²¹² UCM

²¹¹ See PCC’s Point Supplement, Question IV(2)(b) and associated Exhibit.

²¹² On November 20, 2006, the Media Bureau dismissed the mutually exclusive application of Living Faith Fellowship Educational Ministries (“LFF”) (File No. BPED-19990823MA) because LFF’s technical proposal would result in contour overlap to an existing station prohibited by Section 73.509 of the Rules. See 47 C.F.R. § 73.509.

proposes to serve the community of West Clarkston, Washington. Moody proposes to serve Latah, Idaho. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. Each of the applicants certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

177. UCM certified that it qualifies for three points as an established local applicant. UCM's certification was based on the qualifications of a related company. As discussed *supra*, we have determined that UCM does not meet the exact definition of established local applicant and, therefore, that it will receive no points under this criterion.²¹³ Moody certified that it is not entitled to any points under this criterion. UCM claimed two points for diversity of ownership. Moody certified that it is not entitled to points under this criterion. No applicant claimed points as a statewide network. With respect to technical parameters, UCM's proposed 60 dBu contour would encompass 242 square kilometers with a population of 41,891. Moody's proposed 60 dBu contour would encompass 1,687 square kilometers with a population of 56,068. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Moody qualifies for 2 points under this criterion. Accordingly, UCM is credited with a total of 2 points and Moody with two points. Both applications proceed to a tiebreaker.

178. The first issue considered in a tiebreaker for NCE-FM applicants is the number of radio authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. UCM certified that it has attributable interests in one radio authorization. Moody certified that it has attributable interests in 55 radio authorizations. UCM prevails based on this first tie-breaker criterion and is the tentative selectee in Group 990109. The remaining tie-breaker criterion need not be considered.

179. **Group 9901XP.** This group consists of the mutually exclusive applications of CSN International ("CSN"), Black Media Works ("BMW"), Central Florida Education Foundation, Inc. ("Central"), and Merritt Island Public Radio, Inc. ("MIPR"). CSN and BMW propose to serve the community of Cocoa Beach, Florida. Central and MIPR propose to serve Merritt Island, Florida. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. Each of the applicants certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

180. BMW and MIPR each certified that it qualifies for three points as an established local applicant. CSN and Central each certified that it is not entitled to any points under this criterion. CSN, Central, and MIPR each claimed two points for diversity of ownership. BMW certified that it is not entitled to points under this criterion. No applicant claimed points as a statewide network. With respect

On December 26, 2006, LFF filed a Petition for Reconsideration of this action. By letter dated March 19, 2007, the Media Bureau denied reconsideration, concluding that LFF's revised technical proposal did not eliminate the prohibited contour overlap. See Letter to Living Faith Fellowship Educational Ministries from Assistant Chief, Audio Division, Media Bureau, Federal Communications Commission (Mar. 19, 2007).

²¹³ See *supra* ¶¶ 38-39.

to technical parameters, CSN's proposed 60 dBu contour would encompass approximately 27 square kilometers with a population of 40,763.²¹⁴ BMW's proposed 60 dBu contour would encompass 27 square kilometers with a population of 39,449. Central's proposed 60 dBu contour would encompass 30 square kilometers with a population of 48,701. MIPR's proposed 60 dBu contour would encompass 51 square kilometers with a population of 42,606. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant qualifies for any points under this criterion.²¹⁵ Accordingly, CSN and Central are credited with a total of 2 points each, BMW with a total of 3 points, and MIPR with a total of 5 points. Thus, MIPR is the prevailing tentative selectee in Group 9901XP. A tie-breaker analysis is not necessary.

181. **Group 990306.** This group consists of mutually exclusive applications of San Juan College ("SJC"), North Fork Valley Public Radio, Inc. ("North Fork"), and KUTE, Inc. ("KUTE"). SJC and KUTE propose to construct new stations to serve the community of Durango, Colorado. North Fork proposes to modify the facilities of KVMT(FM), Montrose, Colorado. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. As discussed *supra*, SJC was eliminated because it was the only applicant in this group to certify that it would not qualify for a Section 307(b) preference.²¹⁶ As also discussed *supra*, the remaining applicants, North Fork and KUTE, certified that they would qualify for a Section 307(b) preference, but must proceed to a point hearing because neither would provide new NCE service to 5,000 people more than the other.²¹⁷

182. KUTE claimed three points as an established local applicant. North Fork certified that it is not eligible for any points under this criterion. North Fork and KUTE each certified that it is not entitled to any points for diversity of ownership or as a statewide network. With respect to technical parameters, the new area within North Fork's proposed modified 60 dBu contour encompasses 3,554 square kilometers with a population of 7,045. KUTE's proposed 60 dBu contour encompasses 720 square kilometers with a population of 27,431. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant qualifies for any points under this criterion. Accordingly, KUTE is credited with a total of 3 points and North Fork is not credited with any points. Thus, KUTE is the prevailing tentative selectee in Group 990306. A tie-breaker analysis is not necessary.

183. **Group 990307.** This group consists of the mutually exclusive applications of Family Stations, Inc. ("FSI") and Cornerstone Community Radio, Inc. ("Cornerstone"). Both applicants propose to serve the community of Woodstock, Illinois. Neither applicant claimed any points as an established local applicant or as a statewide network. FSI and Cornerstone each certified that it is eligible to receive two points for diversity of ownership. With respect to technical parameters, FSI's 60 dBu contour would encompass 541 square kilometers with a population of 45,130. Cornerstone's proposed 60 dBu contour

²¹⁴ We have adjusted CSN's claimed area coverage of 179 square kilometers because, as discussed *supra*, that claim appeared to erroneously include large areas of water. *See supra*, ¶ 52.

²¹⁵ For purpose of this determination, we compared Friends's "best" technical proposal to the next best area of GMB and the next best population of BBN. *See supra*, ¶¶ 46 and 51.

²¹⁶ *See supra*, ¶ 26.

²¹⁷ *Id.*

would encompass 1,460 square kilometers with a population of 91,877. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Cornerstone qualifies for two points under this criterion. Accordingly, FSI is credited with a total of 2 points, and Cornerstone is credited with a total of 4 points. Thus, Cornerstone is the prevailing tentative selectee in Group 990307. A tie-breaker analysis is not necessary.

184. **Group 9903TP.** This group consists of the mutually exclusive applications of Abundant Life Broadcasting (“ALB”) and Moody Bible Institute (“Moody”). Both applicants propose to serve the community of Jackson, Wyoming. Neither applicant claimed any points as an established local applicant or as a statewide network. ALB and Moody each certified that it is eligible to receive two points for diversity of ownership. Moody based its certification on a pledge to seek cancellation of its license for translator station K216CI, Jackson, Wyoming upon commencement of operations of the proposed full service station.²¹⁸ With respect to technical parameters, ALB’s 60 dBu contour would encompass 1,840 square kilometers with a population of 16,736. Moody’s proposed 60 dBu contour would encompass 2,168 square kilometers with a population of 17,194. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant qualifies for any points under this criterion. Accordingly, ALB and Moody are credited with a total of 2 points each. Both applications will proceed to a tie-breaker.

185. The first issue considered in a tie-breaker for NCE-FM applicants is the number of radio authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. ALB certified that it has attributable interests in 227 radio authorizations. Moody certified that it has attributable interests in 55 radio authorizations. Moody prevails based on this first tie-breaker criterion and is the tentative selectee in Group 9903TP. The remaining tie-breaker criterion need not be considered.

186. **Group 990403.** This group consists of the mutually exclusive applications of Kayser Broadcast Ministries, Inc (“KBM”) and The Cedarville University (“Cedarville”). Both applicants propose to serve the community of Marion, Ohio. KBM claimed three points as an established local applicant. Cedarville certified that it is not eligible to receive any points under this criterion. KBM and Cedarville both claimed two points for diversity of ownership. No applicant claimed points as a statewide network. With respect to technical parameters, KBM’s 60 dBu contour would encompass 649 square kilometers with a population of 56,727. Cedarville’s proposed 60 dBu contour would encompass 1,539 square kilometers with a population of 71,155. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Cedarville qualifies for two points under this criterion. Accordingly, KBM is credited with a total of 5 points and Cedarville is credited with a total of 4 points. Thus, KBM is the prevailing tentative selectee in Group 990403. A tie-breaker analysis is not necessary.

187. **Group 990408.** This group originally consisted of the mutually exclusive applications of The Cedarville University (“Cedarville”), CSN International (“CSN”), Educational Media Foundation (“EMF”), and Mary V. Harris Foundation (“Harris”). As discussed *supra*, Harris’ application has been dismissed for failure to file a timely point supplement.²¹⁹ Therefore, our point system analysis is limited to Cedarville, CSN, and EMF. Cedarville proposes to serve the community of Wooster, Ohio. CSN proposes to serve Brunswick, Ohio. EMF proposes to serve Wadsworth, Ohio. When applicants propose

²¹⁸ See Moody’s Point Supplement, Question IV(2)(b) and associated Exhibit. See *supra*, ¶ 46.

²¹⁹ See *supra*, ¶¶ 15-16

different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. Cedarville, CSN, and EMF each certified that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area. The applications, therefore, proceed to a point hearing.

188. Cedarville, CSN, and EMF each certified that it is not eligible for any points as an established local applicant or statewide network. Each applicant also claimed two points each for local diversity of ownership. EMF based its diversity claim on a pledge to seek cancellation of its license for translator station W219BT, Wadsworth, Ohio upon commencement of operations of its proposed full service station.²²⁰ With respect to technical parameters, Cedarville's proposed 60 dBu contour would encompass 2,262 square kilometers with a population of 215,520. CSN's proposed 60 dBu contour would encompass 3,267 square kilometers with a population of 403,128. EMF's proposed 60 dBu contour would encompass 2,667 square kilometers with a population of 261,511. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. CSN qualifies for one point under this criterion. Accordingly, Cedarville and EMF are credited with a total of 2 points each and CSN is credited with a total of 3 points. Thus, CSN is the prevailing tentative selectee in Group 990408. A tie-breaker analysis is not necessary.

189. **Group 990508.** This group consists of mutually exclusive applications of CSN International ("CSN"), Educational Media Foundation ("EMF"), and Youngshine Media, Inc. ("Youngshine"). CSN proposes to serve the community of Lake Hopatcong, New Jersey. EMF and Youngshine both propose to serve Hopatcong, New Jersey. When applicants propose different communities, the Commission must first determine whether one applicant is credited with a dispositive fair distribution preference. An applicant is eligible for a preference if it would provide a new first and/or second service to at least ten percent of the population, which must be at least 2,000 people, within its proposed service area. As discussed *supra*, EMF was eliminated on a comparative basis because CSN and Youngshine each proposed to provide a combined first and second service to over 5,000 potential listeners more than EMF.²²¹ As also discussed *supra*, the remaining applicants, CSN and Youngshine, must proceed to a point hearing because neither would provide new NCE service to 5,000 people more than the other.²²²

190. Neither CSN nor Youngshine claimed points as an established local applicant or statewide network.²²³ Both claimed two points for diversity of ownership. With respect to technical parameters, CSN's proposed 60 dBu contour would encompass 634 square kilometers with a population of 187,253. Youngshine's proposed 60 dBu contour would encompass 582 square kilometers with a population of 179,583. One technical point is awarded to the applicant that serves at least 10 percent

²²⁰ See EMF's Point Supplement, Question IV(2)(b) and associated Exhibit. See *supra*, ¶ 46.

²²¹ See *supra*, ¶ 27.

²²² *Id.*

²²³ Youngshine originally believed that it might be eligible as an established local applicant based on the local residences of its governing board for more than two years, and therefore answered "yes" to the localism points certification in Question IV(1) of its Point Supplement. Youngshine qualified its certification by disclosing that Youngshine itself had not been in existence for two years prior to the snapshot date. Subsequently, the Commission rejected a similar argument that Youngshine raised in a petition for reconsideration of the point system, and Youngshine amended its answer accordingly to acknowledge that it is not entitled to localism points. See *Comparative Standards for Noncommercial Educational Applicants*, 17 FCC Rcd 13132, 13137-38 (2002).

more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant qualifies for any points under this criterion. Accordingly, CSN and Youngshine are credited with a total of 2 points each. Both applications will proceed to a tie-breaker.

191. The first issue considered in a tie-breaker for NCE-FM applicants is the number of radio authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. CSN certified that it has attributable interests in 572 radio authorizations. Youngshine certified that it has attributable interests in 1 radio authorization. Youngshine prevails based on this first tie-breaker criterion and is the tentative selectee in Group 990508. The remaining tie-breaker criterion need not be considered.

192. **Group 990512.** This group consists of the mutually exclusive applications of University of Massachusetts (“UMass”) and The Talking Information Center (“TIC”). Both applicants propose to serve the community of Marshfield, Massachusetts. UMass and TIC each claimed three points as an established local applicant. UMass and TIC each claimed two points for diversity of ownership. As discussed *supra*, however, TIC erroneously excluded the broadcast interests of one of its board members. We have determined that TIC is thus not eligible to receive any points under this criterion.²²⁴ No applicant claimed points as a statewide network. With respect to technical parameters, UMass’s proposed 60 dBu contour would encompass 306 square kilometers with a population of 78,910. TIC’s proposed 60 dBu contour would encompass 452 square kilometers with a population of 59,682. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant qualifies for any points under this criterion. Accordingly, UMass is credited with a total of 5 points, and TIC is credited with a total of 3 points. Thus, UMass is the prevailing tentative selectee in Group 990512. A tie-breaker analysis is not necessary.

193. **Group 990607.** This group consists of the mutually exclusive applications of Lower Cape Communications, Inc. (“LCC”) and University of Massachusetts, Boston (“UMass”). Both applicants propose to serve the community of Orleans, Massachusetts. LCC and UMass certified that they qualify for three points each as established local applicants. LCC claimed two points for diversity of ownership. UMass certified that it is not eligible for any points under this criterion. UMass claimed two points as a statewide network. LCC certified that it is not eligible for any points under this criterion. With respect to technical parameters, LCC’s 60 dBu contour would encompass 356 square kilometers with a population of 57,024. UMass’s proposed 60 dBu contour would encompass 346 square kilometers with a population of 50,309. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. Neither applicant qualifies for any points under this criterion. Accordingly, LCC and UMass are credited with a total of 5 points each. Both applications will proceed to a tie-breaker.

194. The first issue considered in a tie-breaker for NCE-FM applicants is the number of radio authorizations attributable to the applicants. The applicant with the fewest authorizations prevails. LCC certified that it has an attributable interest in one radio authorization. UMass certified that it has attributable interests in 11 radio authorizations. LCC prevails based on this first tie-breaker criterion and is the tentative selectee in Group 990607. The remaining tie-breaker criteria need not be considered.

195. **Group 990609.** This group consists of the mutually exclusive applications of Hope Christ Church of Marlton, Inc. (“Hope”), WVN Educational Radio Corporation (“WVN”), and JC Radio, Inc. (“JC”). All of the applicants propose to serve the community of Barnegat, New Jersey. Hope, WVN, and JC each certifies that it does not qualify for any points as an established local applicant or statewide network. Hope and WVN claimed two points each for diversity of ownership. JC certified that

²²⁴ See *supra*, ¶¶ 44-45.

it is not eligible for any points under this criterion. With respect to technical parameters, Hope's 60 dBu proposed contour would encompass 849 square kilometers with a population of 58,056. WWN's proposed 60 dBu contour would encompass 855 square kilometers with a population of 68,203. JC's proposed 60 dBu contour would encompass 1,241 square kilometers with a population of 64,392. One technical point is awarded to the applicant that serves at least 10 percent more area and population than the second best proposal. Two points are awarded under this criterion on the basis of a 25 percent differential. No applicant in this group qualifies for any points under this criterion. Accordingly, Hope and WWN are credited with a total of 2 points each. JC is not credited with any points, and is eliminated on this basis. Hope and WWN will proceed to a tie-breaker.

196. The first issue considered in a tie-breaker for NCE-FM applicants is the number of radio authorizations attributable to the applicants. The applicant with the fewest authorizations prevails. Hope certified that it has attributable interests in 22 radio authorizations. WWN certified that it has no attributable interests in any radio authorization. WWN prevails based on this first tie-breaker criterion and is the tentative selectee in Group 990609. The remaining tie-breaker criteria need not be considered.

V. OTHER PETITIONS

197. Additional petitions to deny and petitions for reconsideration were filed in some of the 76 proceedings considered herein. Some were filed against applicants that were not identified as tentative selectees.²²⁵ Others appear to have become moot as a result of amendments to the tentative selectee's application, or it is not clear that the petitioner still wishes to pursue a matter that was raised many years ago and has become stale.²²⁶ Any petitions filed in the NCE proceedings herein are dismissed, without prejudice to re-filing within 30 days of the staff's public notice announcing the tentative selection of the applicant.²²⁷

²²⁵ For example, in Group 960908, Holy Family Communications, Inc. ("HFC") filed a Petition for Reconsideration protesting reinstatement of the mutually exclusive application filed by Mary V. Harris Foundation. We need not consider the Petition because HFC is the tentative selectee. Similarly, in Group 970815, Okaloosa Public Radio, Inc. argued that AFA submitted an amendment which was untimely under the former A/B cut-off procedures and that AFA's original proposal, which covered a smaller area, is the proper application for comparison. We need not consider this pleading because Okaloosa is the tentative selectee even if the amended AFA technical proposal is considered.

²²⁶ For example, in Group 95095E, the application of the tentative selectee, Shofar Broadcasting Corporation ("Shofar") was accepted for filing on March 29, 1996, pursuant to our former A/B cut-off procedures. The Commission received a Petition to Deny in 1996 and an Informal Objection in 1997 alleging that the proposal would cause interference on TV Channel 6 in violation of Section 73.525 of the rules. *See* 47 C.F.R. § 73.525. Shofar amended its coordinates on February 26, 1997, and submitted a more detailed TV 6 study on June 27, 1997, claiming compliance with the rules. *See* Amendments to File No. BPED-19950905MD (Feb. 26, 1997 and June 27, 1997). Neither the petitioner nor objector filed any challenges to Shofar's amendments. Our own study of the application as amended finds it to be acceptable. We will dismiss the Petition to Deny and Informal Objection as moot, without prejudice to any further petitions these parties may file in response to a public notice identifying Shofar as a tentative selectee.

²²⁷ Dismissal of these old petitions without prejudice to re-filing is comparable to action the Commission has taken when petitions for reconsideration of rulemaking proceedings have become stale by the passage of time and/or intervening developments. In the rulemaking context, the Commission has given parties a 30-day period to indicate that they still wish their petitions to be considered and, if so, to refresh the record. *See, e.g., Federal-State Joint Board of Universal Service*, 19 FCC Rcd 23824, 23826 (2004). Parties that do not indicate intent to pursue their petitions for reconsideration are considered to have withdrawn those petitions, which are dismissed by public notice. *Id.* We believe that dismissal of stale petitions by this published order, without prejudice to re-filing and updating, is preferable in the NCE application context because it better comports to the NCE rule concerning the filing of petitions against tentative selectees. *See* 47 C.F.R. § 73.7004. The staff's practice, in NCE comparative cases decided on Section 307(b), has been to require that any petitioner or objector resubmit its objection within the 30-

VI. NEXT STEPS

198. **Acceptability Studies.** Once the Commission selects a tentative selectee pursuant to the comparative selection process, the next step is to consider whether the selectee's application has defects.²²⁸ If found acceptable for filing, the tentative selectee's application is placed on a broadcast applications public notice, and petitions to deny may be filed within 30 days following the release of the public notice.

199. Many of the applications that we have tentatively selected for grant were previously studied and accepted for filing by the staff pursuant to the A/B cut-off procedures that were used prior to adoption of the current NCE comparative standards. Under those procedures, the staff accepted an application for an NCE FM construction permit by placing that application on an "A" cut-off notice, which triggered a period for the filing of mutually exclusive applications. After analyzing responsive applications, the staff issued a "B" cut-off notice accepting the mutually exclusive applications. It is not necessary for the staff to restudy or reaccept applications that have already appeared on an "A" or "B" cut-off notice and for which no amendments have been filed. With respect to such applications, the ordering clauses below direct the staff to issue a public notice announcing the tentative selection of the applications for grant.

200. With respect to applications which were filed in response to the "A" public notice, but which were never listed on a "B" public notice, we have directed the staff to study the applications.²²⁹ The staff has completed its studies and has determined that all tentative selectees are acceptable for filing. The ordering clauses direct the staff to issue a public notice that both accepts these applications for filing and announces their tentative selection.

201. All of the tentative selectees identified in this Order and its Appendix 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.

202. **Forthcoming Staff Action.** We direct the staff, once the public notice period has run, to conduct a final study of each tentatively selected application in accordance with its routine processing procedures. The staff studies should consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of the tentatively

day period established for the filing of petitions against the tentative selectee. *See, e.g., Jacqueline Dearing*, 21 FCC Rcd 6211, n.8 (MB 2006).

²²⁸ 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 within the time specified in the staff letter, provided that the amendment is minor and that the application, as amended, has the same number of points as originally claimed, or more than the points claimed by the next highest applicant. *See* 47 C.F.R. § 73.3522(b)(2). A tentative selectee that is unable to cure the defect is disqualified, and the applicant with the next highest point tally becomes the new tentative selectee. *See* 47 C.F.R. § 73.7004(d).

²²⁹ Lack of a "B" cut-off notice does not affect the validity of any application. The "B" notice served two main purposes: (1) to limit the universe of applications that would be included in each mutually exclusive NCE group by announcing that additional applications filed after the "A" cut-off date and in conflict with the "B" applications would not be accepted; and (2) to establish a deadline for amendments and petitions to deny. The Commission provided for these functions to be accomplished as part of the point system, without the need for further "B" notices. *See NCE MO&O*, 16 FCC Rcd at 5103-04 (determining members of mutually exclusive groups, and announcing procedures for future petitions and amendments to correct defects).

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.

203. With the exception of issues that are novel or require Commission or Administrative Law Judge consideration by law, the staff shall act on the tentatively selected applications pursuant to delegated authority. We delegate to the staff authority to act on any routine matter that may be raised, including whether the applicant is eligible, as certified, for the points awarded herein. The staff need not refer such matters to the Commission or Administrative Law Judge unless the staff determines that the issues are new or novel, or raise a substantial and material question regarding the award of points. Generally, the staff should refer only those issues to the Commission where the exclusion of the points in question could alter the outcome in the particular NCE group, where another applicant claims it should have been awarded enough additional points to make it the tentative selectee, or where a new or novel question or substantial and material question of fact otherwise exists.²³⁰ In such cases, the staff would either designate the application for hearing on the substantial and material question or refer the mutually exclusive group to the Commission for resolution of the novel issue and/or the determination of a successor tentative selectee.

204. The resolution of pending mutually exclusive NCE groups should make it possible for the Commission to accept new NCE applications, from different parties, and for different facilities than those addressed in this Order. We direct the Media Bureau to open a filing window for NCE FM new and major change applications in October 2007. This public notice will provide details on timing and procedures for this first NCE FM filing window. A fall filing window will facilitate Commission outreach efforts to educate potential applicants, especially new entrants, about the Commission's NCE filing and licensing processes. Such timing also would be consistent with our goal to dismiss substantially all of the non-prevailing applications from the 76 groups discussed in this Order and to resolve substantially all other remaining NCE groups prior to the window. Such action would limit to the greatest extent possible the universe of records which NCE FM window applicants must protect.

205. **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.

²³⁰ For example, a competing applicant may contest the points awarded to the tentative selectee in its group by properly filing a staff-level petition to deny the application in response to the public notice issued by the staff announcing the tentative selectee. The staff would evaluate the petition to determine whether: (1) assuming *arguendo* the truth of the facts alleged, that the tentative selectee would only be able to claim the same or fewer points than the Commission awarded to any competing applicant in the same group; (2) a new or novel question exists; and (3) a substantial and material question of fact exists with regard to the challenged award. If the Bureau finds that there are no new or novel questions, or material questions that would cause the tentative selectee to have fewer than or the same number of points as another applicant in the group, the staff would act on the petition(s) to deny, and by public notice grant the application of the tentative selectee and dismiss the competing mutually exclusive application. This function is consistent with the Bureau's delegated authority. See 47 C.F.R. §§ 0.61(h), 0.283. The staff should, however, refer the matter to the Commission or Administrative Law Judge if it answers any of the three questions in the affirmative (*i.e.*, it (1) finds that assuming the truth of the facts alleged, the tentative selectee would only be able to claim the same or fewer points than the Commission awarded to any competing applicant in the same group; (2) finds a new or novel question; or (3) finds a substantial and material question of fact). The Commission or Administrative Law Judge would then resolve new and novel or substantial and material factual matters and, if necessary, conduct a new comparative point hearing.

VII. ORDERING CLAUSES

206. Accordingly, IT IS ORDERED, That pursuant to Sections 0.61 and 0.283 of the Commission's Rules, 47 C.F.R. §§ 0.61, 0.283 and Section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(1), the Chief, Media Bureau, IS DELEGATED authority, subject to the general guidance provided in Section III(H) of this Order, to waive Section 73.3573, 47 C.F.R. § 73.3573, for NCE applications filed prior to 2002, where appropriate consistent with this Order.

207. IT IS FURTHER 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.²³¹ 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.

208. IT IS FURTHER ORDERED, That, except as otherwise noted, all petitions to deny and informal objections filed in the 76 proceedings herein ARE DISMISSED WITHOUT PREJUDICE. Any party wishing to pursue matters raised in these filings against any tentative selectee must refile its objections within the thirty (30) day period for petitions to deny, which period will be established by a staff-issued public notice and in accordance with Section 73.7004 of the Commission's Rules.²³²

209. **Group 880611.** Accordingly, IT IS ORDERED, That the Research Foundation, California State University, Chico, is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Redding, California. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 880611 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of State of Oregon Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University (File No. BPED-19900129MH), and TO GRANT the application of the Research Foundation, California State University, Chico (File No. BPED-19880610ML) 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.

210. **Group 89101E.** Accordingly, IT IS ORDERED, That Hyles-Anderson College is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Crown Point, Indiana. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 89101E and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Moody Bible Institute (File No. BPED-19910409MF) and TO GRANT the application of Hyles-Anderson College (File No. BPED-19891019MA) 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.

²³¹ 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).

²³² 47 C.F.R. § 73.3004.

211. IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573 is waived with respect to the ownership change in the tentative selectee, Hyles-Anderson College.

212. **Group 941116.** Accordingly, IT IS ORDERED, That Positive Alternative Radio, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Ashland, Kentucky. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 941116 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of American Family Association (File No. BPED-19941114MA) and TO GRANT the application of Positive Alternative Radio, Inc. (File No. BPED-19960328MC) 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.

213. **Group 94123E.** Accordingly, IT IS ORDERED, That Iowa State University of Science and Technology is TENTATIVELY SELECTED to be awarded a permit to construct a new NCE FM station at Ottumwa, Iowa. We direct the staff of the Media Bureau to issue a public notice announcing the tentative selectee in NCE Group 94123E and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of Iowa State's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Grassroots Broadcasting Company, Inc. (File No. BPED-19941209MB) and American Family Association (BPED-19950515ML), and TO GRANT the application of Iowa State University of Science and Technology (File No. BPED-19950213MB) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

214. IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in the tentative selectee, Iowa State University of Science and Technology.

215. **Group 950215.** Accordingly, IT IS ORDERED, That the application of Fatima Response, Inc. d/b/a/ St. Michael's Catholic Radio to construct a new NCE station in McCloud, California (File No. BPED-19960503MG) IS DISMISSED.

216. IT IS FURTHER ORDERED, That the application of State of Oregon Acting by and Through the State Board of Higher Education for the Benefit of Southern Oregon State College to construct a new NCE station in McCloud, California (File No. BPED-19950210MA) IS GRANTED as a singleton. We direct the staff to issue a public notice announcing the grant of that singleton application.

217. **Group 95031E.** Accordingly, IT IS ORDERED, That Christian Arts and Education, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Redding, California. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 95031E and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of State of Oregon Acting by and Through the State Board of Regents for the Benefit of Southern Oregon University (File No. BPED-19950713MB) and TO GRANT the application of Christian Arts and Education, Inc. (File No. BPED-19950327MA) 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.

218. **Group 95062E.** Accordingly, IT IS ORDERED, That Education Media Corporation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Rustburg, Virginia. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 95062E and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Positive Alternative Radio, Inc. (BPED-19950628MA) and TO GRANT the application of Education Media Corporation (File No. BPED-19960328MD) 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.

219. **Group 95072E.** Accordingly, IT IS ORDERED, That Board of Regents, University of Nevada, on behalf of Truckee Meadows Community College is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Reno, Nevada. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 95072E and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of Thomas Aquinas School (BPED-19950718MA) and of Stockton Christian Life College (BPED-19951113MB) and TO GRANT the application of Board of Regents, University of Nevada, on behalf of Truckee Meadows Community College (File No. BPED-19951127MA) 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.

220. **Group 95076E.** Accordingly, IT IS ORDERED, That Iowa State University of Science and Technology is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Perry, Iowa. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 95076E and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of American Family Association (File No. BPED-19950711MB) and TO GRANT the application of Iowa State University of Science and Technology (File No. BPED-19951215ME) 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.

221. IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in the tentative selectee, Iowa State University of Science and Technology.

222. **Group 95083E.** Accordingly, IT IS ORDERED, That Maka'ainana Broadcasting Company, Ltd. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Kaneohe, Hawaii. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 95083E and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of Bible Broadcasting Network, Inc. (File No. BPED-19950814MA) and Calvary Chapel of Honolulu, Inc. (File No. BPED-19960416MA) and TO GRANT the application of Maka'ainana Broadcasting Company, Ltd. (File No. BPED-19960418MB) 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.

223. **Group 95095E.** Accordingly, IT IS ORDERED, That Positive Alternative Radio's May 3, 1996, Petition to Deny and WVVA Television's April 2, 1997, informal objection concerning the application of Shofar Broadcasting Corporation (File No. BPED-19950905MD) ARE DISMISSED WITHOUT PREJUDICE.

224. IT IS FURTHER ORDERED, That Shofar Broadcasting Corp. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Beckley, West Virginia. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 95095E and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of Positive Alternative Radio (File No. BPED-19960502MH) and TO GRANT the application of Shofar Broadcasting Corp. (File No. BPED-19950905MD, as modified by BPED-19960226MC) 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.

225. **Group 951129.** Accordingly, IT IS ORDERED, That Good News Ministries, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in St. Joseph, Missouri. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 951129 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of Bible Baptist Temple d/b/a Baptist Temple School (File No. BPED-19951121MF), American Family Association (File No. BPED-19951129MA), and Community Broadcasting, Inc. (File No. BPED-19960517MG) and TO GRANT the application of Good News Ministries, Inc. (File No. BPED-19960514MA) 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.

226. **Group 960304.** Accordingly, IT IS ORDERED, That Life Anew Ministries, Inc. d/b/a Life Christian Academy is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Madisonville, Kentucky. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 960304 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of Board of Regents, Murray State University (File No. BPED-19960619MD) and TO GRANT the application of Life Anew Ministries, Inc. d/b/a Life Christian Academy (File No. BPED-19960328MH) 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.

227. **Group 960813.** Accordingly, IT IS ORDERED, That the University of Northern Iowa is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Bettendorf, Iowa. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 960813 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of American Family Association (BPED-19960805MA) and TO GRANT the application of the University of Northern Iowa (File No. BPED-19970927MA) 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.

228. IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in the tentative selectee, the University of Northern Iowa.

229. **Group 96086E.** Accordingly, IT IS ORDERED, That Bible Broadcasting Network, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Fayetteville, North Carolina. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 96086E and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of American Family Association (File No. BPED-19960806MA) and TO GRANT the application of Bible Broadcasting Network, Inc. (File No. BPED-19970109MG) 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.

230. **Group 960908.** Accordingly, IT IS ORDERED, That Holy Family Communications, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Lancaster, New York. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 960908 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of Mary V. Harris Foundation (File No. BPED-19960920MA) and TO GRANT the application of Holy Family Communications, Inc. (File No. BPED-19960920MA) 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.

231. IT IS FURTHER ORDERED, That the Petition for Reconsideration filed by Holy Family Communications, Inc. on May 28, 2002, concerning reinstatement of the mutually exclusive application filed by Mary V. Harris Foundation (File No. BPED-19970516MA) IS DISMISSED.

232. **Group 960911.** Accordingly, IT IS ORDERED, That Okaloosa Public Radio, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Quincy, Florida. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 960911 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of American Family Association (File No. BPED-19960911MH) and TO GRANT the application of Okaloosa Public Radio, Inc. (File No. BPED-19970326MB) 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.

233. **Group 961010.** Accordingly, IT IS ORDERED, That The Love Station, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Piedmont, Oklahoma. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 961010 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of Educational Media Foundation (File No. BPED-19970110MD), American

Family Association (File No. BPED-19970226MB), and Community Broadcasting, Inc. (BPED-19970313MD), and TO GRANT the application of The Love Station, Inc. (File No. BPED-19961028MB) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

234. **Group 961011.** Accordingly, IT IS ORDERED, That the University of Northern Iowa is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Fairfield, Iowa. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 961011 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of American Family Association (File No. BPED-19961010MC) and TO GRANT the application of the University of Northern Iowa (File No. BPED-19970321MB) 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.

235. IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in the tentative selectee, the University of Northern Iowa.

236. **Group 961121.** Accordingly, IT IS ORDERED, That Life Radio Ministries, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Peachtree City, Georgia. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 961121 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of Community Public Radio, Inc. (BPED-19961104MD) and Augusta Radio Fellowship Institute, Inc. (BPED-19970416ME) and TO GRANT the application of Life Radio Ministries, Inc. (File No. BPED-19970416MF) 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.

237. **Group 970111.** Accordingly, IT IS ORDERED, That the University of Northern Iowa is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Ottumwa, Iowa. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 970111 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of American Family Association (File No. BPED-19970108MI) and TO GRANT the application of the University of Northern Iowa (File No. BPED-19970321MA) 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

238. IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in the tentative selectee, the University of Northern Iowa.

239. **Group 970113.** Accordingly, IT IS ORDERED, That Great Commission Broadcasting Corp. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in

Kirksville, Missouri. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 970113 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of American Family Association (File No. BPED-19970113MB) and TO GRANT the application of Great Commission Broadcasting Corp. (File No. BPED-19970806MA) 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.

240. **Group 970209.** Accordingly, IT IS ORDERED, That The Colleges of the Seneca is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Ithaca, New York and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 970209, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of WSKG Public Telecommunications Council (File No. BPED-19970212MB) and TO GRANT the application of The Colleges of the Seneca (File No. BPED-19970411MC) 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.

241. IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in the tentative selectee, The Colleges of the Seneca.

242. **Group 970310.** Accordingly, IT IS ORDERED, That La Cadena Mundial Hispana, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Painesville, Ohio. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 970310 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of Baldwin-Wallace College (File No. BMPED-19970303IB) and TO GRANT the application of La Cadena Mundial Hispana, Inc. (File No. BPED-19970311MA) 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.

243. **Group 970312.** Accordingly, IT IS ORDERED, That Lincoln High School is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Esko, Minnesota. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 970312 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of State of Wisconsin, Educational Communications Board (File No. BPED-19971211MC) and American Family Association (File No. BPED-19971211MN), and TO GRANT the application of Lincoln High School (File No. BPED-19970331MA) 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.

244. **Group 970514.** Accordingly, IT IS ORDERED, That Southwest Allen County Schools is TENTATIVELY SELECTED to be awarded a construction permit to modify the facilities of WCYT(FM), Lafayette Township, Indiana. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 970514 and establishing a deadline thirty (30) days thereafter for the

filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of American Family Association (File No. BPED-19970501MF) and TO GRANT the application of Southwest Allen County Schools (File No. BPED-19970919MB) 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.

245. **Group 970520.** Accordingly, IT IS ORDERED, That the University of Northern Iowa is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Marion, Iowa. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 970520 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of American Family Association (File No. BRED-19970505MC) and Florida Public Radio, Inc. (BRED-19971030MN), and TO GRANT the application of the University of Northern Iowa (File No. BPED-19971110MC) 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.

246. IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in the tentative selectee, the University of Northern Iowa.

247. **Group 970630.** Accordingly, IT IS ORDERED, That Sirius Syncope, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCC-FM station in Peoria, Illinois. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 970630 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Pinebrook Foundation, Inc. (BPED-19970630MC) and American Family Association (File No. BPED-19970703MF) and TO GRANT the application of the Sirius Syncope, Inc. (File No. BPED-19980319MJ) 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.

248. **Group 970631.** Accordingly, IT IS ORDERED, That St. Gabriel Communications, Ltd. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Ponca, Nebraska and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 970631, accepting its application for filing, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application filed by American Family Association (File No. BPED-19970612MH) and TO GRANT the application of St. Gabriel Communications, Ltd. (File No. BPED-19980318MD) 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.

249. **Group 970726.** Accordingly, IT IS ORDERED, That Mary V. Harris Foundation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Strasburg, Colorado. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 970726, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the

grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of JPI Radio, Inc. (File No. BPED-19970728MA) and CSN International (File No. BPED-19980417MI), and TO GRANT the application of Mary V. Harris Foundation (File No. BPED-19980420MJ) 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.

250. **Group 970730.** Accordingly, IT IS ORDERED, That Moody Bible Institute of Chicago is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Missoula, Montana. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 970730 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of American Family Association (File No. BPED-19970915MD), and TO GRANT the application of the Moody Bible Institute of Chicago (File No. BPED-19970716MA) 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.

251. **Group 970738.** Accordingly, IT IS ORDERED, That Denver Educational Broadcasting, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Vail, Colorado. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 970738 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of Public Broadcasting of Colorado, Inc. (File No. BPED-19970714MB), and TO GRANT the application of Denver Educational Broadcasting, Inc. (File No. BPED-19980123MO) 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.

252. IT IS FURTHER ORDERED, That Denver Educational Broadcasting, Inc.'s July 16, 2004, amendment requesting two points for diversity of ownership, or in the alternative, a waiver of the July 19, 2001, deadline for filing point supplements, IS DENIED.

253. **Group 970815.** Accordingly, IT IS ORDERED, That Okaloosa Public Radio, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Monroeville, Alabama. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 970815 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of American Family Association (File No. BPED-19980226MD) and TO GRANT the application of Okaloosa Public Radio, Inc. (File No. BPED-19980108MG) 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.

254. IT IS FURTHER ORDERED, That the 2001 Petition for Declaratory Ruling filed by Okaloosa Public Radio, Inc. concerning the extent to which the mutually exclusive application of American Family Association (File No. BPED-19980226MD) can be considered for points IS DISMISSED AS MOOT.

255. **Group 970823.** Accordingly, IT IS ORDERED, That the request of Mary V. Harris Foundation for waiver of the deadline for filing of point supplements IS DENIED and that its application (File No. BPED-19980225MH) IS DISMISSED for failure to timely file a point supplement.

256. IT IS FURTHER ORDERED, That Spokane Public Radio is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Spokane, Washington. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 970823 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of American Family Association (File No. BPED-19970820MA) and TO GRANT the application of Spokane Public Radio (File No. BPED-19980224MA) 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.

257. **Group 970928.** Accordingly, IT IS ORDERED, That Empire Broadcasting Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Buras, Louisiana and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 970928, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of American Family Association (File No. BPED-19970903MA) and TO GRANT the application of Empire Broadcasting Inc. (File No. BPED-19980226MB) 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.

258. **Group 97091E.** Accordingly, IT IS ORDERED, That Upper Columbia Media Association is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Clarkston, Washington. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 97091E, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of Living Faith Fellowship Educational Ministries (File No. 19980123MB) and TO GRANT the application of Upper Columbia Media Association (File No. BPED-19970910MC) CONDITIONED UPON compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

259. **Group 971015.** Accordingly, IT IS ORDERED, That Marshalltown Education Plus, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Marshalltown, Iowa. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 971015 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of American Family Association (File No. BPED-19971009MA) and TO GRANT the application of Marshalltown Education Plus, Inc. (File No. BPED-19980417MH) 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.

260. **Group 971019.** Accordingly, IT IS ORDERED, That Temple University of the Commonwealth System of Higher Education is TENTATIVELY SELECTED to be awarded a

construction permit for a new NCE FM station in Coatesville, Pennsylvania, and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 971019, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of American Family Association (File No. BPED-19980204MA) and Family Stations, Inc. (File No. BPED-19980512MB), and TO GRANT the application of Temple University of the Commonwealth System of Higher Education (File No. BPED-19980512MF) 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.

261. **Group 980111.** Accordingly, IT IS ORDERED, That Minn-Iowa Christian Broadcasting Foundation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in New Ulm, Minnesota. We direct the staff to issue a public notice accepting the application of MICBF, announcing the tentative selectee in NCE Group 980111, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of American Family Association (File No. BPED-19980105MD) and TO GRANT the application of Minn-Iowa Christian Broadcasting Foundation (File No. BPED-19980602MC) 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.

262. **Group 980301.** Accordingly, IT IS ORDERED, That the Application for Review filed by Richland Center Fellowship IS DENIED.

263. IT IS FURTHER ORDERED, That the application of the State of Wisconsin Educational Communications Board ("WECB") to construct a new NCE station in Adams, Wisconsin (File No. BPED-19980826MH) shall be processed as a singleton. We direct the staff to issue a public notice accepting the singleton application of WECB and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of WECB's singleton application, we direct the staff, by public notice, TO GRANT the WECB application (File No. BPED-19980826MH).

264. **Group 98033P.** Accordingly, IT IS ORDERED, That American Family Association is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Hickory, North Carolina. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 98033P and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Radio Training Network, Inc. (File No. BPED-19980814MQ) and TO GRANT the application of American Family Association (File No. BPED-19980316MB) 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.

265. **Group 9803HL.** Accordingly, IT IS ORDERED, That Coos Bay School District 9 is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Coos Bay, Oregon and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 9803HL, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the

tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of Family Stations, Inc. (BPED-19980923MG) and TO GRANT the application of Coos Bay School District 9 (File No. BPED-19980810MC) 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.

266. **Group 980401.** Accordingly, IT IS ORDERED, That University of Wyoming is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Laramie, Wyoming. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 980401 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of American Family Association (File No. BPED-19980407MD), Educational Communications of Colorado Springs, Inc. (File No. BRED-19980825MD), and Colorado Christian University (File No. BRED-19980825ME), and TO GRANT the application of University of Wyoming (File No. BPED-19980826MK) 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.

267. IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in the tentative selectee, University of Wyoming.

268. **Group 980404.** Accordingly, IT IS ORDERED, That Cornerstone Baptist Educational Ministries, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Benton Harbor, Michigan, and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 980404, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of American Family Association (File No. BPED-19980401MA) and TO GRANT the application of Cornerstone Baptist Educational Ministries, Inc. (File No. BPED-19980909MQ) 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.

269. **Group 980415.** Accordingly, IT IS ORDERED, That the request of Mary V. Harris Foundation for waiver of the deadline for the filing of point supplements IS DENIED and that its application (File No. BPED-19981202MG) IS DISMISSED for failure to timely file a point supplement.

270. IT IS FURTHER ORDERED, That Forum Communications Company's November 4, 1999, Petition to Deny the Application of Selah Corporation (File No. BPED-19981201MA) IS DISMISSED WITHOUT PREJUDICE.

271. IT IS FURTHER ORDERED, That Selah Corporation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Horace, North Dakota. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 980415 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of Pioneer Public Broadcasting Company, Inc. (File No. BPED-19980427MQ) and TO GRANT the application of Selah Corporation (File No. BPED-19981201MA) 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.

272. **Group 98043S.** Accordingly, IT IS ORDERED, That the University of Kentucky is TENTATIVELY SELECTED to be awarded a construction permit to modify the facilities of WRFL(FM), Lexington, Kentucky, and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 98043S, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of American Family Association (File No. BPED-19980213ME) and TO GRANT the application of the University of Kentucky (File No. BMJPED-19980922MF) 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.

273. IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in the tentative selectee, University of Kentucky.

274. **Group 980510.** Accordingly, IT IS ORDERED, That Central Florida Educational Foundation, Inc. is TENTATIVELY SELECTED to be awarded a construction permit to modify the facilities of WPOZ(FM), Union Park, Florida and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 980510, accepting its application for filing, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of CSN International (File No. BPED-19980519MD) and Florida Public Radio, Inc. (BPED-19981110MK), and TO GRANT the application of Central Florida Educational Foundation, Inc. (File No. BMPED-19990511IA) 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.

275. **Group 980605.** Accordingly, IT IS ORDERED, That Iowa State University of Science and Technology is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Oskaloosa, Iowa and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 980605, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Salt and Light Communications, Inc. (File No. BPED-19980630MC) and Family Stations, Inc. (File No. BPED-19981215MC), and TO GRANT the application of Iowa State University of Science and Technology (File No. BPED-19981215MA) 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.

276. IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in the tentative selectee, Iowa State University of Science and Technology.

277. **Group 980609.** Accordingly, IT IS ORDERED, That Community Public Radio, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in La Grange, Georgia. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 980609 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If,

after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Family Stations, Inc. (File No. BPED-19981203MJ) and TO GRANT the application of Community Public Radio, Inc. (File No. BPED-19980604MA) 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.

278. **Group 980616.** Accordingly, IT IS ORDERED, That Post-Newsweek Stations, Orlando, Inc.'s July 17, 2001, Informal Objection to the Application of Daystar Public Radio, Inc. (File No. BPED-19981231MB) and a similar argument filed by Central Florida Educational Foundation, Inc. with its June, 1, 2001, point supplement ARE DISMISSED WITHOUT PREJUDICE.

279. IT IS FURTHER ORDERED, That Daystar Public Radio, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Favoretta, Florida. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 980616 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of Christian Educational Association (File No. BPED-19980610MB), Good Idea, Inc. (File No. BPED-19990104MA), Pathway Public Radio (File No. BPED-19990104MB), Community Public Radio, Inc. (File No. BPED-19990104MN), and Central Florida Educational Foundation, Inc. (File No. BPED-19990104MP), and TO GRANT the application of Daystar Public Radio, Inc. (File No. BPED-19981231MB) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

280. **Group 980619.** Accordingly, IT IS ORDERED, That Educational Communications of Colorado Springs, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Laramie, Wyoming. We direct the staff to issue a public notice accepting the application of ECCS, announcing the tentative selectee in NCE Group 980619, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Salt and Light Communications, Inc. (File No. BPED-19980625MB) and TO GRANT the application of Educational Communications of Colorado Springs, Inc. (File No. BPED-19990601MG) 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.

281. **Group 9806PP.** Accordingly, IT IS ORDERED, That Houston Christian Broadcasters, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Sealy, Texas, and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 9806PP, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of Christian Educational Association and TO GRANT the application of Houston Christian Broadcasters, Inc. (File No. BPED-19990319MC) 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.

282. **Group 980704.** Accordingly, IT IS ORDERED, That William Jewell College is TENTATIVELY SELECTED to be awarded a construction permit to modify the facilities of KWJC(FM), Liberty, Missouri. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 980704, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of Community Broadcasting, Inc. (File No. BPED-19990104MM) and TO GRANT the application of William Jewell College (File No. BPED-19980717MA) 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.

283. IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in the tentative selectee, William Jewell College.

284. **Group 980801.** Accordingly, IT IS ORDERED, That Friends of Radio Maria, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Peshtigo, Wisconsin. We direct the staff to issue a public notice accepting the application of FRM, announcing the tentative selectee in NCE Group 980801, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of VCY America Inc. (File No. BPED-19980811MH) and TO GRANT the application of Friends of Radio Maria, Inc. (File No. BPED-19990120MD) 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.

285. **Group 980805.** Accordingly, IT IS ORDERED, That the University of Wyoming is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Laramie, Wyoming. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 980805 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Educational Communications of Colorado Springs, Inc. (File No. BPED-19990310MI), and WCN, Inc. (File No. BPED-19990311MO) and TO GRANT the application of the University of Wyoming (File No. BPED-19980826MA) 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.

286. IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in the tentative selectee, University of Wyoming.

287. **Group 980815.** Accordingly, IT IS ORDERED, That Kids First, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Zionsville, Indiana, and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 980815, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of Mary V. Harris Foundation (File No. BPED-19950510MG) and TO GRANT the application of Kids First, Inc. (File No. BPED-19980918MG) 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.

288. **Group 980902.** Accordingly, IT IS ORDERED, That CCS Radio, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Beaumont, Texas. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 980902 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Friends of Radio Maria, Inc. (File No. BPED-19990311ME) and TO GRANT the application of CCS Radio, Inc. (File No. BPED-19980911MB) 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.

289. **Group 980910.** Accordingly, IT IS ORDERED, That Minn-Iowa Christian Broadcasting, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Windom, Minnesota and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 980910, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of American Family Association (File No. BPED-19980925MA) and TO GRANT the application of Minn-Iowa Christian Broadcasting, Inc. (File No. BPED-19981215MB) 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.

290. **Group 981003.** Accordingly, IT IS ORDERED, That Section 73.7003(b)(2) of the Commission's Rules, 47 C.F.R. § 73.7003(b)(2), IS WAIVED to permit Henderson State University to exclude Class D FM station KSWH-FM, Arkadelphia, Arkansas for purposes of receiving local diversity of ownership points.

291. IT IS FURTHER ORDERED, That Henderson State University is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Arkadelphia, Arkansas and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 981003, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Bright Light Broadcasting, Inc. (File No. BPED-19981030MC) and TO GRANT the application of Henderson State University (File No. BPED-19990318MB) CONDITIONED UPON its relinquishment of the license for Class D FM station KSWH-FM, Arkadelphia, Arkansas, and its 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.

292. **Group 981005.** Accordingly, IT IS ORDERED, That Friends of Radio Maria, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in D'Iberville, Mississippi and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 981005, accepting its application for filing, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of Greater Mississippi Broadcasting, Inc. (File No. BPED-19981026MB), American Family Association

(File No. BPED-19990507MC), and Bible Broadcasting Network, Inc. (File No. BPED-19990510MC), and TO GRANT the application of Friends of Radio Maria, Inc. (File No. BPED-19990510MJ) 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.

293. **Group 981010.** Accordingly, IT IS ORDERED, That Billings Community Cable Corporation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Billings, Montana. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 981010 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Solid Rock Broadcasting, Inc. (File No. BPED-19981030MB) and TO GRANT the application of Billings Community Cable Corporation (File No. BPED-19990602MJ) 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.

294. **Group 981106.** Accordingly, IT IS ORDERED, That Houston Christian Broadcasters, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Camp Wood, Texas. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 981106 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Christian Educational Association (File No. BPED-19990601MB) and TO GRANT the application of Houston Christian Broadcasters, Inc. (File No. BPED-19981119MB) 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.

295. **Group 981209.** Accordingly, IT IS ORDERED, That Family Stations, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Janesville, Wisconsin and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 981209, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of VCY America, Inc. (File No. BPED-19981224MA) and TO GRANT the application of Family Stations, Inc. (File No. BPED-19990719MI) 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.

296. **Group 981212.** Accordingly, IT IS ORDERED, That Indiana Community Radio Corporation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Madisonville, Kentucky and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 981212, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Pennyrile Christian Community, Inc. (File No. BPED-19981211MA) and TO GRANT the application of Indiana Community Radio Corporation (File No. BPED-19991117ABJ) 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.

297. **Group 990101.** Accordingly, IT IS ORDERED, That the University of Northern Iowa is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Oskaloosa, Iowa. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 990101 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Solid Rock Broadcasting, Inc. (File No. BPED-19990428MD) and TO GRANT the application of the University of Northern Iowa (File No. BPED-19990113MA) 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 points by use of a point system.

298. IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in the tentative selectee, the University of Northern Iowa.

299. **Group 990109.** Accordingly, IT IS ORDERED, That Upper Columbia Media Corporation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in West Clarkston, Washington and its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice, announcing the tentative selectee in NCE Group 990109, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of Moody Bible Institute of Chicago (File No. BPED-19991004AAC) and TO GRANT the application of Upper Columbia Media Corporation (BPED-19990129MD) CONDITIONED UPON compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

300. **Group 9901XP.** Accordingly, IT IS ORDERED, That Merritt Island Public Radio, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Merritt Island, Florida, and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 9901XP, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of CSN International (File No. BPED-1999012MA), Black Media Works, Inc. (File No. BPED-19990730MA), and Central Florida Educational Foundation, Inc. (File No. BPED-19990730MB), and TO GRANT the application of Merritt Island Public Radio, Inc. (File No. BPED-19990730MD) 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.

301. **Group 990306.** Accordingly, IT IS ORDERED, That the application of KUTE, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Durango, Colorado. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 990306, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of San Juan College (File No. BRED-19990318MG) and North Fork Valley Radio, Inc. (File No. BRED-19990329IA), and TO GRANT the application of KUTE, Inc. (File No. BPED-19990505MA)

CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

302. IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in the tentative selectee, KUTE, Inc.

303. **Group 990307.** Accordingly, IT IS ORDERED, That Cornerstone Community Radio, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Woodstock, Illinois and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 990307, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Family Stations, Inc. (File No. BPED-19990917MI) and TO GRANT the application of Cornerstone Community Radio, Inc. (File No. BPED-19990917MM) 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.

304. **Group 9903TP.** Accordingly, IT IS ORDERED, That Moody Bible Institute of Chicago is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Jackson, Wyoming and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 9903TP, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Abundant Life Broadcasting (File No. BPED-19990301MA) and TO GRANT the application of Moody Bible Institute of Chicago (File No. BNPED-19991214ACD) CONDITIONED UPON its relinquishment of the license for FM translator station K216CI, Jackson, Wyoming, and 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.

305. **Group 990403.** Accordingly, IT IS ORDERED, That Kayser Broadcast Ministries, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Marion, Ohio. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 990403 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Cedarville University (File No. BPED-19990610MF) and TO GRANT the application of Kayser Broadcast Ministries, Inc. (File No. BPED-19990426MB) 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.

306. **Group 990408.** Accordingly, IT IS ORDERED, That the request of Mary V. Harris Foundation for waiver of the due date for point supplements IS DENIED and that its application (File No. BPED-20000118AEN) IS DISMISSED for failure to file a timely point supplement.

307. IT IS FURTHER ORDERED, That CSN International is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Brunswick, Ohio and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 990408, accepting its application for filing, and establishing a deadline

thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of Cedarville University (File No. BPED-19990407ME) and Educational Media Foundation (File No. BNPED-20000118AAR), and TO GRANT the application of CSN International (File No. BNPED-20000118AAK) 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.

308. **Group 990508.** Accordingly, IT IS ORDERED, That the application of Youngshine Media, Inc. is ACCEPTED FOR FILING and that it is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Hopatcong, New Jersey. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 990508, accepting its application, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of CSN International (File No. BPED-19991029AAH) and Educational Media Foundation (File No. BNPED-19991101ABJ), and TO GRANT the application of Youngshine Media, Inc. (File No. BNPED-19991104AAH) CONDITIONED UPON that selectee's compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

309. **Group 990512.** Accordingly, IT IS ORDERED, That the University of Massachusetts is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Marshfield, Massachusetts and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 990512, accepting its application for filing, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive application of The Talking Information Center, Inc. (File No. BPED-20000118ADQ) and TO GRANT the application of University of Massachusetts (File No. BNPED-2000118ABT) 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.

310. **Group 990607.** Accordingly, IT IS ORDERED, That Lower Cape Communications, Inc. is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Orleans, Massachusetts. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 990607 and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of The University of Massachusetts, Boston (File No. BNPED-20000118ABS) and TO GRANT the application of Lower Cape Communications, Inc. (File No. BPED-19990618MA) 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.

311. IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in the tentative selectee, Lower Cape Communications, Inc.

312. **Group 990609.** Accordingly, IT IS ORDERED, That WWN Educational Radio Corporation is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Barnegat, New Jersey, and that its application is ACCEPTED FOR FILING. We direct the staff to issue a public notice announcing the tentative selectee in NCE Group 990609, accepting its application for filing, and establishing a deadline thirty (30) days thereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff TO DISMISS the mutually exclusive applications of Hope Christian Church of Marlton, Inc. (File No. BPED-19990629MA) and JC Radio, Inc. (File No. BNPED-20000503ABB), and TO GRANT the application of WWN Educational Radio Corporation (File No. BNPED-20000502AAI) 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.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Noncommercial Educational Groups

1. The Appendix consists of a 6-page chart and this explanatory text. The chart lists each proceeding chronologically by group number, *i.e.*, from oldest to most recently filed group. Boldface type is used to designate the applicant in each group that the Commission has tentatively selected to receive a construction permit, as well as the decisive factors in the Commission's determination. Thus, the chart highlights the point total of applicants selected because they had the highest number of points, and highlights the number of existing authorizations of applicants selected by tie-breaker.

2. An entry of "n/a" in the Appendix's Section 307(b) column indicates that Section 307(b) principles are not applicable to that mutually exclusive application, typically because each of the applicants in the group proposed to serve the same community. We also used this "n/a" designation for late-filed or otherwise defective submissions, which were eliminated from the group prior to our consideration of Section 307(b) factors. When applicants propose service to different communities, the Appendix identifies each applicant's eligibility for Section 307(b) consideration with a "yes" or "no" entry.²³³ Where applicable, the Appendix lists the population which each applicant claims would receive a new first service or aggregated first and second service. The Appendix includes population numbers only to the extent that such information is material to the analysis. For example, if no applicant in a group claimed a preference based on first service alone, the Appendix does not report first service data. Instead, that data would be included in the aggregated first and second service numbers, if the applicants claimed a preference on that basis. If an applicant is eliminated on the basis of a Section 307(b) analysis, that outcome is noted as "Elim on 307b" in the Appendix. Section IV of this Order and the Appendix contain additional information from which the reader can ascertain the reason that Section 307(b) was not determinative in a particular group.

3. With respect to points, the Appendix to this Order places three points in the "Established Local Applicant" column, two points in the Diversity of Ownership column, and two points in the Statewide Network column of each applicant satisfying the respective requirements for receipt of such points. Applicants that do not satisfy those requirements receive no points in the respective columns. An applicant may receive zero, one, or two points in the Best Technical Parameters column depending upon the size of the area and population to be covered by its proposed station. In the case of a tie, the Appendix lists any tiebreaker factors considered including the number of attributable authorizations reported by each tied applicant. Any applications that did not proceed to a tiebreaker because they were entitled to fewer points than the tied applicants are designated with the note "Elim Points."

4. Notes are also used to describe certain application characteristics. For example, applications to modify existing NCE stations are designated with the note "Mod" to distinguish them from the majority of applications which propose to construct new stations. The note "Exclude Trans" is used to identify applicants which excluded existing translators from their diversity showings by pledging to request cancellation of the translator upon commencement of full service operations. Additional commonly used notes include "Pts Adjust" (reflecting our determination to award fewer points than the applicant claimed); and "Waiver Gr" or "Waiver Den" (reflecting grant or denial of a rule waiver request). The most common use of Waiver Gr involves applicants that underwent a majority change in ownership, as reflected in a comparison of the ownership interests disclosed in the original application

²³³ The "no" designation is used when applicants propose to serve different communities, but each certifies that it would not qualify for a Section 307(b) preference because it would not provide a new first or second service to ten percent of the population within its respective service area.

and supplemental ownership reports or amendments submitted by the applicant. Notes used less frequently include “Singleton” (the application is no longer mutually exclusive with any other application); “Moot Petit” or “Pet Dismiss” (a petition to deny or petition for reconsideration was dismissed or found to be moot); “Waiver Moot” (the applicant’s waiver request is moot); “A4R denied” (denial of an Application for Review); and “Tech Param” (a textual discussion of points awarded for technical parameters is helpful to understanding the points awarded).

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

[Insert Chart Here]

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational (“NCE”) FM Stations*

Noncommercial educational stations—traditional public broadcasting, as well as other stations licensed to universities, churches, and municipalities—have been fulfilling their educational mission to their communities for decades. In this era of increasingly non-local, hyper-commercialized, homogenized radio, it becomes especially important that the FCC preserve and advance programs—like our NCE FM licensing rules—that give great weight to diversity of ownership and localism.

I am therefore pleased to support today’s item granting 76 applications to construct FM radio stations. I also hope that the Commission acts swiftly on any petitions to deny the permits we tentatively award today. The important thing is that the stations we establish today get on the air as soon as is practicable.

I am also pleased that our decision directs the Bureau to issue a Public Notice that will give applicants at least six months notice of our next filing window, which will be the first such window in a very long time. This substantial lead time will give potential applicants—including non-traditional stakeholders, such as Native American groups—sufficient time to develop their applications, while at the same time ensuring that the new filing window opens in a timely fashion.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations

I am pleased to support this Order granting seventy-six permits to construct or modify noncommercial educational (NCE) stations on the reserved FM band. NCE stations represent the best of local radio. They are organized, owned, and operated by local community organizations, schools, and churches throughout this country. In many communities, they often represent one of the last vestiges of local ownership, local news and reporting, and local community involvement.

In today's *Order*, we implement a new point system to resolve mutually exclusive applications for NCE FM radio stations, and we clear some backlog -- approximately 200 competing applications for construction permits that have been pending from as early as 1988, when the Commission used comparative hearings to resolve competing applications.

While I will not elaborate on the seventy-six individual proceedings resolved in this *Order*, I would like to express my support for a selection procedure that seems to have the right priorities. At the outset, being from rural America, I am pleased that with all mutually exclusive applications for NCE stations, we first endeavor to further our statutory objective of a "fair, efficient, and equitable distribution of radio service" among all communities in America. This analysis, pursuant to section 307(b) of the Communications Act, ensures that all communities benefit from the use of the public airwaves.

If an applicant is not selected under of our section 307(b) analysis, we then compare mutually exclusive groups of NCE FM applications under the new point system that has withstood judicial scrutiny and is based on localism, specifically local ownership and local diversity. I am pleased that, at least when it comes to noncommercial radio, the Commission puts local ownership on top of our list of factors to consider. In addition, the Commission requires each licensee to maintain a local inspection file, and certify in its governing documents that it will pursue the twin goals of localism and diversity. I am hopeful that these accountability mechanisms will help ensure that licensees continue to serve the diverse and local needs of their communities for years to come. From my travels across this country, I have learned that local ownership really matters. Absentee landlords may not be as responsive to the needs of the community that they are required to serve.

In each of the seventy-six groups of applications we resolve in this *Order*, we hope that it is based on the most accurate information. If an applicant believes there is good reason for the Commission to reconsider its choice of a tentative selectee, parties are entitled to file petitions to deny within thirty days. Providing this procedural safeguard, I believe that all applicants will be afforded due process and an opportunity to be heard fully. Once that process has concluded in the next few months, we look forward to notifying the public about the opening of a filing window for further NCE FM applications later this fall. There has been considerable interest in this upcoming NCE window, so it is incumbent upon us to provide the public with the agreed upon six months notice, and to reach out and educate to all interested parties, including those in Indian Country and members of socially and economically disadvantaged groups, about our filing and licensing procedures.

**STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL**

Re: Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations

I am pleased to support this Order, in which we resolve 76 groups of long-pending mutually exclusive noncommercial educational FM station applications. Now that the courts have resolved the judicial challenges that delayed our implementation of new point system procedures to process competing applications, we have taken the opportunity to provide guidance on our comparative criteria and to determine tentative selectees for the stations. Next, FCC staff will take the steps necessary to complete the licensing process. After that process is completed, we will open a filing window for major change applications for the first time in several years and, for the first time, new NCE FM stations, this fall. Noncommercial stations are crucial to the vitality and diversity of radio. In fact, while listenership for many commercial stations has been declining, more Americans are tuning in to noncommercial educational stations to hear what they cannot find elsewhere. This Order will help NCE stations meet that consumer demand faster, and it will help spur even more competition in the audio market. I look forward to the new licensees providing their varied and innovative services to the public.

I thank the Media Bureau, especially the Audio Division, for the expertise and long hours they dedicated to the immense undertaking that is this Omnibus Order. I thank the Chairman for his leadership and I support this Order.