

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

In the Matter of)	
)	
Comparative Consideration of 10 Groups of)	NCE MX Group Numbers 59A, 59B, 76,
Mutually Exclusive Applications for Permits to)	104, 106, 114, 122, 158, 196, 215
Construct New Noncommercial Educational FM)	
Stations)	

MEMORANDUM OPINION AND ORDER

Adopted: June 5, 2023

Released: June 5, 2023

By the Commission:

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I. INTRODUCTION

1. The Commission has before it for comparative consideration and review 10 groups of mutually exclusive (MX) applications for new noncommercial educational (NCE) FM station construction permits.¹ By this Memorandum Opinion and Order (Order), we perform threshold fair

¹ On November 29, 2021, the Media Bureau (Bureau) issued a public notice identifying 231 groups of mutually exclusive NCE FM applications. *See Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations*, Public Notice, 36 FCC Rcd (continued....)

distribution of service analyses and use a point system to tentatively select an application for grant in each group. Petitions to deny the application of any of these tentative selectees must be filed within 30 days of the date of release of this Order.²

2. In the majority of groups addressed in this Order, the Bureau or Commission previously resolved the conflicting NCE proposals by applying the comparative procedures codified in Part 73, Subpart K, of the Commission's rules (rules)³ and tentatively selected applications for grant. These actions now require additional analysis as a result of subsequent filings or events.

II. BACKGROUND

3. The applications addressed in this Order were filed in November 2021, during the most recent filing window for new NCE FM applications.⁴ Each application was MX with at least one other application, and the applicants had an opportunity to enter into settlement agreements among themselves to resolve mutual exclusivity.⁵ The Bureau and the Commission subsequently resolved nine of the MX groups addressed herein, along with over 161 other MX groups, comprising hundreds of NCE FM applications,⁶ by applying the NCE comparative procedures, which include (1) threshold fair distribution criteria for applications proposing to serve different communities,⁷ and (2) an NCE point system,⁸ which is a simplified, "paper hearing" process for selecting among mutually exclusive NCE applications.⁹ The Commission's comparative review of MX applications is based on applicant-provided information. To expedite the licensing of new NCE FM stations, the Bureau and the Commission rely on applicant certifications and documentation and do not independently confirm their accuracy during the review process. Rather, the Bureau and the Commission rely on the petition to deny process to verify the accuracy of the points claimed and certifications.¹⁰

4. After applying these procedures, the Bureau or Commission tentatively selected

16452 (MB rel. Nov. 29, 2021) (*NCE MX Public Notice*). Each of the groups analyzed herein was included in the *NCE MX Public Notice*.

² See 47 CFR § 73.7004(b).

³ 47 CFR §§ 73.7000 – 73.7005.

⁴ See *Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB rel. April 21, 2021). The window was available for FM reserved band (channels 201-220) proposals. See 47 CFR § 73.501.

⁵ See *NCE MX Public Notice*, 34 FCC Rcd at 16452. The NCE FM applicants had an opportunity to enter into and file settlement agreements and to submit technical amendments to resolve conflicts and expedite the grant of applications filed in the NCE FM window.

⁶ See, e.g., *Threshold Fair Distribution Analysis of 13 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-477 (MB May 2, 2022) (*13 Group 307(b) Order*); *Comparative Consideration of 27 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 22-61 (Aug. 2, 2022) (*First Comparative Order*).

⁷ See 47 U.S.C. § 307(b); 47 CFR § 73.7002(a).

⁸ See 47 CFR § 73.7003 (point system selection procedures).

⁹ See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000) (*2000 NCE Order*), clarified, Memorandum Opinion and Order, 16 FCC Rcd 5074 (2001) (*2001 NCE MO&O*), recon. denied, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002). See also *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, MB Docket No. 19-3, Report and Order, 34 FCC Rcd 12519 (2019) (*NCE LPFM Order*) (amending the comparative rules and procedures), *aff'd*, Order on Reconsideration, FCC 20-121, 35 FCC Rcd 10180 (2020) (*NCE Order on Reconsideration*).

¹⁰ See *2001 NCE MO&O*, 16 FCC Rcd at 5104, para. 87.

applications for grant from each MX group and initiated a 30-day period for filing petitions to deny against the applicants tentatively selected.¹¹ In this Order, we address several outstanding, unresolved challenges from the November 2021, NCE FM window. The pleadings addressed herein include multiple petitions to deny¹² the tentative selectee applications of prior Commission decisions regarding the subject MX groups. In many of the petitions to deny, a petitioner has challenged the inclusion of claimed points, thus potentially altering the outcome of the particular NCE MX group. Accordingly, the Bureau has referred these groups to the Commission.¹³ Although the groups we resolve in this Order involve a broad range of fact patterns, they also involve many common issues arising from our NCE comparative process. We therefore believe that organizing this Order primarily by topic and consolidating these decisions as a single order will provide guidance on the application of many of the NCE comparative criteria.

5. Section III of this Order provides an introductory overview of each NCE comparative criterion. In Section IV we use the point system to analyze one MX group for the first time and re-analyze three MX groups. Section V is devoted to a challenges to our prior award of established local applicant points. Finally, in Section VI we address one challenge to our tie-breaker criteria.

III. GENERAL NCE COMPARATIVE PROCEDURES

6. Given the finite nature of and high demand for spectrum, the Commission cannot grant a construction permit to every qualified NCE applicant. Due to the noncommercial nature of the NCE service, MX¹⁴ applications for new station construction permits are not subject to auction, but are resolved by applying comparative procedures.¹⁵ Specifically, the Commission's comparative analysis of MX NCE applications generally consists of three main components. First, when NCE FM applicants in an MX group propose service to different communities, the Commission performs a threshold fair distribution analysis under section 307(b) of the Communications Act of 1934, as amended (the Act).¹⁶ Second, application conflicts that are not resolved under this "fair distribution" analysis are compared by the Commission under an NCE point system,¹⁷ which is a simplified, "paper hearing" process.¹⁸ Third, if

¹¹ See 47 CFR § 73.7004(b)

¹² In cases involving a petition to deny, the Commission applies a two-step analysis under the public interest standard. The Commission must first determine whether the petition contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest. 47 U.S.C. § 309(d)(1); *Astroline Communications Co., Ltd. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (*Astroline*). If the petition meets this first step, the Commission must determine whether "on the basis of the application, the pleadings filed, or other matters which [the Commission] may officially notice," the petitioner has raised a substantial and material question of fact as to whether the application would serve the public interest. *Astroline*, 857 F.2d at 1561; 47 U.S.C. § 309(e).

¹³ The Commission directed the Bureau to refer only those issues where the exclusion or inclusion of challenged or claimed points could alter the outcome of a particular NCE group, or where a new or novel question exists. See, e.g., *First Comparative Order*, *supra* note 6, at para.87 (standards for staff evaluation of petitions).

¹⁴ Conflicting NCE applications, which cannot all be granted consistent with the Commission's technical rules, are considered mutually exclusive. An MX group consists of all applications which are MX to at least one other application in the group.

¹⁵ See note 9, *supra*.

¹⁶ 47 U.S.C. § 307(b) (Section 307(b)). Although the Media Bureau has delegated authority to perform the Section 307(b) analyses, we are performing the Section 307(b) analyses, where applicable herein, for certain groups in conjunction with our point system analyses in order to expedite consideration of these groups. See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101, n.16 (2007) (*NCE Omnibus*); 47 CFR §§ 0.61 and 0.283.

¹⁷ See 47 CFR § 73.7003 (point system selection procedures).

¹⁸ See note 9, *supra*.

necessary, the Commission makes a tie-breaker determination, based on applicant-provided data and certifications. Each of these steps is described in greater detail below.¹⁹

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

7. Section 307(b) states that the Commission must “provide a fair, efficient, and equitable distribution” of broadcast service among the states and communities.²⁰ In accordance with this directive, the Commission considers the fair distribution of service as a first, or threshold, issue in its NCE FM comparative review process²¹ in order to ascertain whether grant of any of the applications would best further the Section 307(b) objective.²² The first step of the Section 307(b), or fair distribution, analysis, is to determine whether any of the applicants in the MX group is a federally recognized Native American Tribe or Alaska Native Village proposing to serve Tribal Lands²³ and claims the Tribal Priority.²⁴

8. If there is no Tribal Applicant in the MX group,²⁵ the second step in the Section 307(b) analysis is to determine whether any applicant would provide a first or second reserved band channel NCE aural service to a substantial population (the First or Second NCE Service Preference) by comparing population coverage totals.²⁶ Specifically, during this step, an NCE FM applicant is eligible to receive a fair distribution preference (or Section 307(b) preference)²⁷ if it would provide a first or second reserved

¹⁹ In advance of the November 2021 filing window, the Commission amended its rules and procedures for filing NCE FM applications and selecting and licensing competing NCE FM applications. *See NCE LPFM Order, supra* note 9. The changes were designed to improve the comparative selection procedures, reduce confusion among future applicants, expedite the initiation of new service to the public, and eliminate unnecessary applicant burdens. *See also Media Bureau Announces October 30, 2020, Effective Date of New NCE and LPFM Rules*, Public Notice, 35 FCC Rcd 12694 (Nov. 2, 2020).

²⁰ 47 U.S.C. § 307(b).

²¹ *See* 47 CFR § 73.7002; 2000 NCE Order, 15 FCC Rcd at 7396 (2000) (concluding that “fair distribution of stations to communities should remain a threshold issue”); 2001 NCE MO&O, 16 FCC Rcd at 5077 (“when competing FM applications propose to serve different communities, a proposal would be considered best, as a threshold matter, if it would provide service to a significant unserved or underserved population”).

²² *See* 47 U.S.C. § 307(b) (“In considering applications for licenses . . . when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”); 47 CFR § 73.7002(a). Applicants’ Form 2100, Schedule 340, Fair Distribution of Service certifications enable the Commission to consider whether service to one community over the other would best achieve the Commission’s directive to distribute radio service fairly among communities.

²³ *See* 47 CFR §§ 73.7000, 73.7002(b).

²⁴ An NCE FM applicant is eligible to receive a fair distribution preference, and ultimately be awarded the construction permit, if it identifies itself as a Tribal Applicant, proposes Tribal Coverage, and proposes the first reserved channel NCE service owned by any Tribal Applicant at a community of license located on Tribal Lands (the Tribal Priority). *See* 47 CFR § 73.7000 (defining a “Tribal Applicant” and “Tribal Coverage”); *see also* 47 CFR § 73.7002(b); *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, First Report and Order, 25 FCC Rcd 1583 (2010) (establishing the Section 307(b) Tribal Priority). *Threshold Fair Distribution Analysis of Mutually Exclusive Applications of the Southern California Tribal Chairman’s Association and the Foundation for Economic Justice d/b/a/ Center for Economic Justice for Permits to Construct New Noncommercial Educational FM Stations Filed in November 2021 Window*, FCC 22-28, Memorandum Opinion and Order (rel. April 19, 2022).

²⁵ None of the MX groups addressed in this Order contain a Tribal Applicant. Accordingly, the first step of the Section 307(b) analysis, the Tribal Priority analysis, is inapplicable herein.

²⁶ *See* 47 CFR § 73.7002(b).

²⁷ The terms “fair distribution preference” and “Section 307(b) preference” are used interchangeably to refer to the preference given to an MX application that is deemed to substantially further the fair distribution of service goals enunciated in Section 307(b).

band channel NCE aural service to at least 10% of the population (in the aggregate), within the proposed station's service area, provided that the population served is at least 2,000 people. If only one applicant in an MX group qualifies for the First or Second NCE Service Preference, its "fair distribution" (Section 307(b)) preference is dispositive,²⁸ and that applicant will be awarded the construction permit.

9. If more than one applicant in the MX group claims a First or Second NCE Service Preference, the applicant proposing to provide the greatest number of people with the highest level of service will be awarded a construction permit, if it will provide such service to at least 10% of the people within the station's 60 dBu contour *and* to at least 5,000 more people than the next best applicant.²⁹ First service will be preferred over second service.³⁰ Accordingly, the Commission first examines the applicants' first service levels alone to determine whether one of the proposals is superior and should receive a decisive preference. If such applicants are equivalent with respect to first service, or no applicant qualifies for a first service preference, the Commission considers combined first and second NCE aural service population totals. At each stage of the Section 307(b) analysis, any applicant that is comparatively disfavored in terms of Section 307(b) eligibility or service totals is eliminated. The process ends when the Commission determines that one applicant is entitled to a Section 307(b) preference, or that either (1) none of the remaining applicants can be selected or eliminated based on a Section 307(b) preference, or (2) each remaining applicant proposes to serve the same community. Any remaining MX applicants proposing equivalent service overall, or proposing the same community, proceed to a point system analysis.³¹

10. Each applicant claiming a First or Second NCE Service preference must support its fair distribution claim with an exhibit identifying the population residing within the proposed station's 60 dBu service contour and the number of people that would receive a new first or second NCE aural service.³² Further, any applicant which receives a decisive Section 307(b) preference is 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.³³

B. Point System Selection Process.

11. The Commission compares mutually exclusive groups of NCE FM applications, which cannot be decided pursuant to the Section 307(b) analysis, under the point system set forth in section

²⁸ As noted, in the case of an MX group with a Tribal Applicant, an applicant qualifying for a Tribal Priority, however, will prevail over any MX applicant claiming a First or Second NCE Service Preference.

²⁹ 47 CFR § 73.7002(b).

³⁰ *Id.*

³¹ See 47 CFR § 73.7003 (point system selection procedures).

³² See *id.* § 73.7002(b). Applicants were required to use the most recently available, *i.e.*, 2010 Census, population data. See *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window*, DA 21-885, 36 FCC Rcd 11458, 11463, n.24 (MB rel. July 23, 2021) (*NCE Filing Procedures Public Notice*); FCC Form 2100, Schedule 340, Instructions for Fair Distribution of Service at 12-14. An applicant's fair distribution showing must be computed as of the time of filing (close of the filing window for applications filed prior to the window) and cannot be enhanced thereafter. See 47 CFR § 73.7003(e) and (f)(3); *NCE Filing Procedures Public Notice* at 11468; 2001 *NCE MO&O*, 16 FCC Rcd at 5082-83. However, an applicant that subsequently makes engineering changes that would diminish its fair distribution position must amend its application to reflect that diminished position. See 47 CFR §§ 1.65 and 73.7003(e).

³³ See 47 CFR § 73.7005(b); see also 47 CFR § 73.7002(c). During this period, such applicant may make minor modifications to its authorized facilities, provided that "(i) the modification does not downgrade service to the area on which the preference was based, or (ii) any potential loss of first and second NCE service is offset by at least equal first and, separately, combined first and second NCE service population gain(s), and the applicant would continue to qualify for a decisive Section 307(b) preference."). *Id.*

73.7003 of the rules.³⁴ The NCE point system awards a maximum of seven merit points, based on four distinct criteria, described below.³⁵ When MX NCE FM applications proceed to a point system analysis, the Commission reviews the applicants' point submissions³⁶ to compare the MX applications and tentatively select the application with the highest point total from each MX group for grant.³⁷

12. First, we award three points to applicants certifying that they have been local and established for at least two years. To qualify for the three points as an "established local applicant"³⁸ an applicant must certify that it has been local and established in the community to be served continuously for at least two years immediately prior to the application filing.³⁹ To be considered local, a non-governmental applicant must have a physical headquarters, campus, or 75% of its governing board members residing within 25 miles of the reference coordinates of the proposed community of license.⁴⁰ A governmental unit is considered local within its jurisdictional boundaries.⁴¹

13. If an applicant certifies that it is an "established local applicant" it must submit substantiating documentation with its application to illustrate how it qualifies as local and established.⁴² Examples of acceptable documentation include corporate material from the secretary of state, lists of names, addresses, and length of residence of board members and copies of governing documents requiring a 75% local governing board, or course brochures indicating that classes have been offered at a local campus for the preceding two years.⁴³ Any applicant awarded localism points in this Order has provided support for its certification. Thus, the specific point system determinations for each MX group that follows only discuss an applicant's documentation if it is insufficient to justify awarding localism points.

14. Second, we award two points for local diversity of ownership if no party to the application holds an attributable interest in any other station or authorized construction permit whose

³⁴ See 47 CFR § 73.7003. Unlike the 307(b) analysis, the point system selection process cannot be performed by the Bureau on delegated authority. See *2000 NCE Order*, 15 FCC Rcd at 7420.

³⁵ See 47 CFR § 73.7003(b).

³⁶ Each NCE FM applicant was required to complete the "Point System Factors/Tie Breakers" Section of FCC Form 2100, Schedule 340, Noncommercial Educational Station for Reserved Channel Construction Permit Application (Schedule 340) in the Bureau's Licensing and Management System (LMS) by the November 9, 2021 filing deadline.

³⁷ The Commission has reaffirmed its longstanding one-grant policy. See *NCE Order on Reconsideration*, *supra* note 9. The one-grant policy provides that only one application should be granted out of each mutually exclusive group, while providing the remaining competing applicants the opportunity to file again in the next filing window. *Id.* The Commission will not authorize "secondary grants" in MX NCE FM groups after the initial resolution of the MX applications. A secondary grant process would allow non-winning applicants that are not mutually exclusive with the tentative selectee to proceed to a second round of analysis by the Commission. *Id.* See also *NCE LPFM Order*, 34 FCC Rcd at 12528, n.68 (reaffirming the established one-grant policy and declining to pursue a secondary application grant practice).

³⁸ See 47 CFR § 73.7000.

³⁹ See *id.* § 73.7003(b)(1).

⁴⁰ A local headquarters or residence must be a primary place of business or residence and not, for example, a post office box, lawyer's office, branch office, or vacation home, which are more easily feigned and/or present less of an opportunity for meaningful contact with the community. See *2000 Order*, 15 FCC Rcd at 7410, para. 54.

⁴¹ For example, a state government is considered local throughout the state; a City Board of Education is considered local through the city; a state university is considered local throughout the state.

⁴² An applicant claiming points as an established local applicant must also pledge to maintain localism characteristics during the period from grant of the construction permit until the station has achieved at least four years of on-air operations. See 47 CFR § 73.7005(c); see also *NCE LPFM Order*, 34 FCC Rcd at 12523, para. 8.

⁴³ See *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11465.

principal community (city grade) contour overlaps that of the applicant's proposed station.⁴⁴ To qualify for the diversity of ownership points, an applicant must submit either a contour map showing no overlap with the proposed NCE FM station, a statement that the applicant holds no attributable interests in any nearby radio stations, or a certification that it holds no attributable interests in any broadcast stations.⁴⁵ Any applicant awarded diversity of ownership points in this Order has either satisfied this requirement or submitted a divestiture pledge, as detailed below. Thus, the specific point system determinations for each MX group that follows only discuss an applicant's documentation if it is insufficient to justify awarding diversity points.

15. We note that an NCE FM applicant with an overlapping attributable interest, however, can still qualify for diversity of ownership points if it commits to divest the broadcast interest or resign from the attributable positional interest.⁴⁶ The applicant must submit the divestiture pledge with the application by the close of the filing window. We do not require the applicant to divest or resign by the close of the filing window. Rather, if we award that applicant a construction permit based on points, the applicant must complete the actual divestiture or resignation by the time the new NCE FM station commences program test operations.⁴⁷

16. Third, we award two points for certain state-wide networks providing programming to accredited schools. These points are available only to applicants that cannot claim a credit for local diversity of ownership.⁴⁸ The state-wide network credit is an alternative for applicants that use multiple stations to serve large numbers of schools and, therefore, do not qualify for the local diversity of ownership credit. Applicants claiming points as a state-wide network must submit supporting documentation as an application exhibit.⁴⁹

17. Fourth, an applicant that proposes the best technical proposal in the group (*i.e.*, proposes service to the largest population and area, excluding substantial areas of water) may receive up to two points. The applicant receives one point if its proposed service area *and* population are 10% greater than those of the next best area and population proposals, or two points if both are 25% greater than those of the next best area and population proposals, as measured by each proposed station's predicted 60 dBu signal strength contour.⁵⁰ If the best technical proposal does not meet the 10% threshold, no applicant is awarded points under this criterion. In considering this criterion, we have accepted applicants' coverage

⁴⁴ See 47 CFR § 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 CFR § 73.7000. Interests of certain entities providing more than 33% of the applicant's equity and/or debt are also attributable. *Id.*

⁴⁵ See Attributable Interests, Other Authorizations, of Schedule 340. An applicant claiming points for diversity of ownership must also pledge to comply with the restrictions on station modifications and acquisitions during the period from grant of the construction permit until the station has achieved at least four years of on-air operations. See 47 CFR § 73.7005(c); see also *NCE LPFM Order*, 34 FCC Rcd at 12524, para. 12.

⁴⁶ See *NCE LPFM Order*, 34 FCC Rcd at 12525, para. 13 (expanding the Commission's divestiture policy by recognizing full-service station divestiture pledges for comparative purposes and crediting all contingent divestiture pledges that are made and submitted by the close of the filing window).

⁴⁷ *Id.*

⁴⁸ See 47 CFR § 73.7003(b)(3).

⁴⁹ See Form 2100, Schedule 340 Instructions at page 16 (detailing preferred documentation to support this point claim).

⁵⁰ *Id.* § 73.7003(b)(4). See *NCE Omnibus*, 22 FCC Rcd at 6121-22, paras. 50-51. If there is one top applicant in terms of area and population, that applicant will receive one point even if there is no single next best applicant for both factors. The Commission will compare the top applicant's proposed area to the proposed area of the applicant with the next best area proposal and the top applicant's population to the proposed population of the applicant with the next best population proposal.

and population claims.⁵¹

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

C. Tie-Breakers.

19. In the event MX applicants are tied with the highest number of points, the tied applicants proceed to a tie-breaker round.⁵² The first tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant.⁵³ The applicant with the fewest attributable authorizations prevails and becomes the tentative selectee. If the tie is not broken by this first factor, we apply a second tie-breaker: the number of pending radio station applications attributable to each applicant.⁵⁴ The tentative selectee will be the applicant with the fewest pending new and major change applications in the same service.

20. If a tie remains after the second tie-breaker, applicants are considered under a third and final tie-breaker criterion – prior NCE applications.⁵⁵ The tentative selectee will be the applicant that can demonstrate that: (1) it applied in a previous filing window, and had its application accepted for filing and processed, but subsequently dismissed in favor of an applicant possessing superior points or a tie-breaker showing; (2) it was in continuous existence as a legal entity at all times from the date of the previous NCE window filing until the present; and (3) it does not hold any NCE construction permit or license.⁵⁶ If this third factor fails to break the tie, we use time-sharing as the tie-breaker of last resort. Specifically, we designate the remaining tied applicants in the MX group as the tentative selectees and direct the tentative selectees to submit, within 90 days of the release of the Order identifying the tentative selectees, a voluntary time-sharing agreement.⁵⁷

D. Timely Documentation of Comparative Qualifications.

21. The NCE FM application, Schedule 340, is certification-based, but requires applicants to document certain of their claims by submitting supporting information.⁵⁸ Applicants must submit timely-filed exhibits supporting their point claims. We will not give credit to certifications which require the

⁵¹ Our procedures for this November 2021 NCE FM filing window required applicants to measure area in square kilometers and exclude significant areas of water, *e.g.*, oceans and lakes, and measure population using the 2010 Census Block Data available from the Census Bureau. *See* Form 2100, Schedule 340 Instructions at page 16.

⁵² *See* 47 CFR § 73.7003(c).

⁵³ *Id.* § 73.7003(c)(1). Applicants are required to count all attributable full service commercial and NCE radio stations (licenses and construction permits) and any FM translator stations providing non-fill-in service. An applicant may exclude fill-in translators, any translator which the applicant seeks to replace with its applied for full-service NCE FM station, and any station, which it pledges to divest. *See 2001 NCE MO&O*, 16 FCC Rcd at 5102-03, para. 85; *see also* Form 2100, Schedule 340 Instructions at page 17.

⁵⁴ *See* 47 CFR § 73.7003(c)(2). When reporting pending applications, applicants were required to include new and major change radio applications, including the subject application and all other applications filed in the window by the November 9, 2021 deadline. Applicants should not have included any requests to participate in an auction filed on Schedule 175 and other applications such as voluntary assignment of license, license renewal, and minor change in existing facilities. *See NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11467.

⁵⁵ *See NCE LPFM Order*, 34 FCC Rcd at 12527-28, para. 19; 47 CFR § 73.7003(c)(3).

⁵⁶ *Id.* Applicants were required to submit an attachment demonstrating their qualifications under this third tie-breaker criterion.

⁵⁷ *See* 47 CFR § 73.7003(c)(4). If the tentative selectees do not agree on a voluntary time sharing arrangement within 90 days, we will impose mandatory time sharing, granting all tentative selectees “equal, concurrent, non-renewable” licenses. 47 CFR § 73.7003(c)(5).

⁵⁸ *See 2000 NCE Report and Order*, 15 FCC Rcd at 7423, para. 89.

applicant to submit documentation, but which are not supported with any such timely submitted documentation. For example, we reject claims in this Order where the applicant certifies that it qualifies for points as an established local applicant but fails to supply supporting information referred to in the certification. While there is some flexibility in the type of documentation an applicant may provide, an applicant that does not submit timely support cannot have made a valid certification and will not receive the claimed points.⁵⁹ Similarly, we will not consider documentation to support a claimed comparative point if it was submitted in an amendment after the November 2021, filing deadline. In such cases, we adjust the points of such applicants downward.

22. Finally, the NCE FM applicant's qualifications for points are initially determined “as of the closing of the filing window” *i.e.*, the November 9, 2021, filing deadline.⁶⁰ For example, NCE organizations are considered “established” if they have operated as local entities since November 9, 2019, *i.e.*, for at least two years prior to the November 9, 2021, Application Deadline. These “snap shot” applicant characteristics establish an applicant's maximum points and its maximum position in the event of a tie-breaker. This common reference date ensures a level competitive field for applicants, with their qualifications all compared as of the same time.⁶¹ In order to prevent gamesmanship, any changes made after the filing deadline may potentially diminish, but cannot enhance, an applicant's comparative position and point total. Therefore, we have taken into account any amendments that adversely affect an applicant's point total and comparative position. We have not considered any amendments, filed after the filing deadline, which improve an applicant's comparative position.⁶²

IV. POINT SYSTEM ANALYSES

23. This Section contains narrative descriptions of our point system analyses, organized sequentially by assigned group number. NCE MX Group 215 is being considered for the first time. In NCE MX Groups 59B, 158, and 196, the Commission or Bureau previously considered the group and named a tentative selectee, but subsequent filings or events ensued, which now necessitate additional analysis. Unless otherwise noted, every component of the analysis is based on information provided by each of the respective applicants.⁶³

24. At the outset, we again note that each group of applicants has had an opportunity to resolve mutual exclusivities by settlement and technical amendment. In addition, we emphasize that applicants were required to report their qualifications as of the date of closing of the filing window.⁶⁴ Any changes made thereafter may potentially have diminished, but could not enhance, an applicant's

⁵⁹ See, e.g., *Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window*, Memorandum Opinion and Order, 25 FCC Rcd 5013, 5017, para. 11 (2010) (“applicant submitting no timely documentation at all cannot be found to have made a valid certification”).

⁶⁰ See 47 CFR § 73.7003(e).

⁶¹ See, e.g., *2001 NCE MO&O*, 16 FCC Rcd at 5082-83, paras. 23-26; see also *id.* at 5083, para. 26 (“Of overall concern to us in this area is that we are comparing applications that use the same data. Reliance on information as of the close of the window will ensure that applicants have essentially a common reference date. With a common reference date and a common method of calculating population, the staff will analyze applicants on a similar basis.”).

⁶² See 47 CFR § 73.7003(e). For example, an applicant may lose claimed points, such as the diversity of ownership points, as a result of acquiring an overlapping station after the November 2021, filing deadline. In contrast, if an applicant certifies that it does not qualify for one of the point factors, it cannot later amend its application to claim such points. This is the case even if the applicant actually would have qualified for the point it is seeking at the time it filed the application.

⁶³ See FCC Form 2100, Schedule 340, Fair Distribution of Service certifications and Point System Factors/Tiebreakers certifications.

⁶⁴ See *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11467-68.

comparative position.

A. NCE MX Group 59B⁶⁵

25. This group consists of six applications to serve different communities in Florida and Georgia. In Florida, Faith and Action Community Outreach, Inc. (Faith) proposes to serve Madison, and Big Bend Heritage Music Association, Inc. (Big Bend) proposes to serve Perry. In Georgia, Elijah Radio (Elijah) proposes to serve Dasher; Georgia Public Telecommunications Commission (GPTC) proposes to serve Pelham; Church Planters of America (Church Planters) proposes to serve Quitman; and Bemiss Road Baptist Church and Lowndes County Christian Academy Inc. (Bemiss) proposes to serve Valdosta.

26. Group 59B originally included two additional applicants, CSN International (CSN) and Inverse Focus Ministry, Inc. (Inverse). The Bureau initially performed a fair distribution analysis of the eight applications and identified Inverse as the tentative selectee in Group 59B.⁶⁶ Inverse and CSN, however, subsequently requested dismissal of their applications.⁶⁷ Accordingly, the Bureau conducted a second 307(b) analysis and identified Big Bend as the new tentative selectee of this group.⁶⁸ However, Big Bend subsequently filed an amendment to its application in which it revised its population data and certified that it was not eligible for a fair distribution preference.⁶⁹ Accordingly, the Bureau performed a third fair distribution analysis and identified Elijah as the new tentative selectee of this group.⁷⁰ However, the Bureau subsequently found that it neglected to consider Elijah's previously filed amendment to its application, which reduced its claimed combined first and second NCE service population total.⁷¹ Accordingly, the Bureau rescinded the tentative selection of Elijah's application and conducted a new fair distribution analysis, considering Elijah's revised fair distribution exhibit.⁷² The Bureau was unable to designate a new tentative selectee based on the section 307(b) fair distribution analysis, and therefore, referred Elijah and GPTC, the only two applicants claiming a fair distribution preference, to the Commission for a point system analysis.⁷³

⁶⁵ Group 59, which originally contained 17 applications, was bifurcated as a result of a technical amendment. The other applications in the MX group were initially evaluated as Group 59A in a previous order and are re-evaluated herein at *infra* paras. 75-79. See *First Comparative Order*, *supra* note 6, at 11, paras. 32-34.

⁶⁶ See *13 Group 307(b) Order*, *supra* note 6, 4-5, para. 11.

⁶⁷ See Application File Nos. 0000167809 and 0000167493.

⁶⁸ *Threshold Fair Distribution Analysis of 5 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-1166, at 4-5, para. 10 (MB Nov. 9, 2022) (*Five Group Fair Distribution Order*).

⁶⁹ See Application File No. 0000166291, Fair Distribution of Service Section and Attach. "Perry 210 Amendment Purpose.pdf" (filed Dec. 7, 2022).

⁷⁰ *Threshold Fair Distribution Analysis of 1 Group of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 23-59, at 4, para. 10 (MB Jan. 23, 2023).

⁷¹ See Application File No. 0000167410 at Attach. "Engineering Exhibits for 767346 Amendment.pdf" (filed Jan. 28, 2022). An applicant's fair distribution showing must be computed as of the time of filing and cannot be enhanced thereafter. See 47 CFR § 73.7003(e) and (f)(3). However, an applicant that subsequently makes engineering changes that would diminish its fair distribution position must amend its application to reflect that diminished position. See 47 CFR §§ 1.65 and 73.7003(e). Elijah's revised fair distribution exhibit, which the staff inadvertently did not consider, reflects Elijah's diminished position.

⁷² *NCE MX Group 59B*, Letter Order, DA 23-23-80 (MB Jan. 27, 2023) (*NCE MX Group 59B Letter*).

⁷³ *Id.* In the *NCE MX Group 59B Letter*, the Bureau conducted a new fair distribution analysis and found that the fair distribution claims of Elijah and GPTC are comparable. Specifically, Elijah claims to provide combined first and second NCE service to 2,149 people; GPTC claims to provide combined first and second NCE service to 6,971 people. The applicant proposing to provide service to the greatest number of people will only be awarded a

(continued....)

27. GPTC claims three points as an established local applicant. Elijah certifies that it is not entitled to any points under this criterion. Each applicant claims two points for diversity of ownership. Neither applicant claims points as a state-wide network. With respect to technical parameters, Elijah's proposed 60 dBu contour would encompass 479 square kilometers with a population of 16,634. GPTC's proposed 60 dBu contour would encompass 712.7 square kilometers with a population of 19,136. GPTC qualifies for one point as the best technical proposal because it proposes to serve at least 10% more area and population than Elijah. Accordingly, Elijah is credited with two points, and GPTC is credited with a total of six points. GPTC is, therefore, the new tentative selectee in Group 59B.

B. NCE MX Group 158⁷⁴

28. This group consists of eight applications proposing service to different communities in New Mexico and Texas. New Mexico Junior College (NMJC), New Hope Baptist Church – Hobbs (NHBH), City Of Hobbs, New Mexico (CHN), Christian Ministries of the Valley, Inc. (CMVI), and Eastern New Mexico University (ENMU) each proposes to serve Hobbs, New Mexico. In Texas, Christian Television Radio Ministry (CTRM) proposes to serve Andrews; Teleamerica Communications West Palm Beach Corp. (TCWP) proposes to serve Kermit; and Hispanic American Christian Network, Inc. (HACN) proposes to serve Wink. CHN, CMVI, ENMU, and HACN each claim eligibility for a fair distribution preference.⁷⁵ NMJC, NHBH, CTRM, and TCWP do not claim a fair distribution preference, and are therefore, each eliminated. HACN claims to provide first NCE service to 3,329 people; CHN to 18,588 people; CMVI to 15,938 people; and ENMU to 20,954 people. HACN is eliminated because CMVI's next best proposal would serve at least 5,000 more people. Because the remaining three applications propose service to the same community, the fair distribution analysis ends, and CHN, CMVI, and ENMU proceed to a point system analysis to determine which will serve the community of Hobbs, New Mexico.

29. CMVI certifies that it is not entitled to any points. CHN and ENMU each claim three points as an established local applicant. ENMU also claims two points for diversity of ownership. ENMU, however, certifies that it has 15 existing authorizations, but did not submit supporting documentation to justify its diversity claim.⁷⁶ Accordingly, we do not award diversity of ownership points to ENMU. No applicant claims points as a state-wide network. With respect to technical parameters, CHN's proposed 60 dBu contour would encompass 4,357 square kilometers with a population of 63,446 people. CMVI's proposed 60 dBu contour would encompass 9,594 square kilometers with a population of 81,393. ENMU's proposed 60 dBu contour would encompass 8,047 square kilometers with a population of 80,483. We do not award any points for the best technical proposal because no proposal would serve at least 10% more in both area and population than the others.

construction permit if it will provide such service to at least 10% of the people within the station's 60 dBu contour and to at least 5,000 more people than the next best applicant. See 47 CFR § 73.7002(b). The other four applicants in Group 59B did not claim a fair distribution preference, and accordingly, Big Bend, Faith, Church Planters, and Bemiss were each eliminated.

⁷⁴ Group 158 was analyzed in a previous point system order, and City of Hobbs, New Mexico (CHN) was designated the tentative selectee. See *First Comparative Order*, *supra* note 6, at paras.73-74. On September 1, 2022, CHN filed an amendment to withdraw its claim for diversity of ownership points and forfeit its tentative selectee status. See File No. 0000167470. We, therefore, re-analyze Group 158 in light of this amendment.

⁷⁵ See File Nos. 0000167470, 0000166726, 0000166693, and 0000167507, Fair Distribution of Service Section, and associated exhibits. CHN's 60 dBu contour encompasses 63,446 people, and its claimed aggregated first and second NCE service is 28,570 people. CMVI's 60 dBu contour encompasses 81,393 people, and its claimed aggregated first and second NCE service is 46,655. ENMU's 60 dBu contour encompasses 80,483 people, and its claimed aggregated first and second NCE service is 45,637 people. HACN's 60 dBu contour encompasses 19,065 people, and its claimed aggregated first and second NCE service is 11,639 people. Each applicant thus would provide combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

⁷⁶ See *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11467.

Accordingly, CMVI is not credited with any points; CHN and ENMU are each credited with three points and proceed to the tie breaker analysis.

30. 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. ENMU certifies that it has attributable interests in 15 radio authorizations, and CHN certifies that it has no attributable radio interests. We note, however, that CHN neglected to count its LPFM station KHBX-LP, Hobbs, New Mexico or update its count to include its recently granted NCE FM construction permit.⁷⁷ After accounting for these authorizations, CHN still prevails based on this first tie-breaker and is the tentative selectee in Group 158.

C. NCE MX Group 196

31. This group consists of two applications proposing service to different communities in Texas. Texas Public Radio (TPR) proposes to serve Gonzales, and Centro Cristiano de Vida Eterna San Antonio (CCVESA) proposes to serve Runge. The group initially included another CCVESA application to serve Shiner (CCVESA-Shiner), and the Bureau previously conducted a fair distribution analysis and identified CCVESA-Shiner as the tentative selectee.⁷⁸ The Bureau, however, subsequently rescinded its tentative selection, dismissed the CCVESA-Shiner application,⁷⁹ and referred the remaining CCVESA and TPR applications to the Commission for a point system analysis.⁸⁰

32. Neither applicant claims points as an established local applicant or state-wide network. Each applicant claims two points for diversity of ownership, with TPR's claim based on a pledge to divest KCTI(AM), Gonzales, Texas, and its associated FM translator station K233CZ. With respect to technical parameters, CCVESA's proposed 60 dBu contour would encompass 2,891 square kilometers with a population of 18,675. TPR's proposed 60 dBu contour would encompass 2,016 square kilometers with a population of 17,649. Because neither applicant's proposal would serve at least 10% more area and population than the other, we do not award points for this criterion. Accordingly, CCVESA and TPR are each credited with two points and proceed to the tie-breaker analysis.

33. 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. CCVESA certifies that it has attributable interests in 10 radio authorizations, and TPR certifies that it has attributable interests in 13 radio authorizations. We note, however, that CCVESA's count is inaccurate because it neglects to include the 13 non-fill-in FM translator stations⁸¹ held by its principal,

⁷⁷ See File No. 0000167469 (granted March 20, 2023).

⁷⁸ *Five Group Fair Distribution Order*, *supra* note 68, at 5, para. 11.

⁷⁹ See *NCE MX Group 196*, Letter, DA 23-60 (January 23, 2023) (*NCE MX Group 196 Letter*). The Bureau found that the CCVESA-Shiner application was defective because CCVESA lacked reasonable site assurance at the time it filed the application.

⁸⁰ *Id.* In the *NCE MX Group 196 Letter*, the Bureau conducted a new fair distribution analysis of the CCVESA and TPR applications and found that the applicants' fair distribution claims are comparable. Specifically, CCVESA claims to provide new first NCE service to 3,724 people and combined first and second NCE service to 18,675 people; TPR claims to provide new first NCE service to 4,175 people and combined first and second NCE service to 16,542 people. Because the Bureau was unable to designate a new tentative selectee based on the section 307(b) fair distribution analysis, it referred Group 196 to the Commission.

⁸¹ See 47 CFR § 73.7003(c)(1). Applicants are required to count all attributable full service commercial and NCE radio stations (licenses and construction permits) and any FM translator stations providing non-fill-in service. An applicant may only exclude fill-in translators, any translator which the applicant seeks to replace with its applied for full-service NCE FM station, and any station, which it pledges to divest.

Martin Guevera.⁸² After accounting for this error and adjustment, TPR has fewer attributable radio authorizations, and is therefore, the new tentative selectee in Group 196.

D. NCE MX Group 215

34. This group consists of two applications to serve different communities in the Virgin Islands. Crucian Educational Non Profit Group Inc. (CENPGI) proposes to serve Charlotte Amalie, and Evangelical Megaphone Ministries, Inc. (EMMI) proposes to serve Frederiksted. CENPGI is the only applicant to claim eligibility for a fair distribution preference.⁸³ CENPGI, however, provides only an attachment that lists the total service area population of 50,216, and a map without a population breakdown to support its claim. Accordingly, we are unable to determine whether CENPGI satisfies the 10% threshold and 2,000-person minimum criteria.⁸⁴ Therefore, because no applicant qualifies for a fair distribution preference, the applicants proceed to a points analysis.

35. Neither applicant claims points as an established local applicant or state-wide network. CENPGI and EMMI each claim two points for diversity of ownership. With respect to technical parameters, CENPGI's proposed 60 dBu contour would encompass 73.7 square kilometers with a population of 50,216. EMMI's proposed 60 dBu contour would encompass 211 square kilometers with a population of 50,011. Neither applicant qualifies for any points for the best technical proposal because neither proposes to serve at least 10% more area and population than the other. Accordingly, CENPGI and EMMI are each credited with a total of two points, and proceed to a tie-breaker analysis.

36. 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. CENPGI certifies that it has an attributable interest in one radio authorization. EMMI certifies that it has no attributable radio authorizations. However, EMMI was granted two new NCE FM construction permits in December 2022.⁸⁵ Accordingly, we find that EMMI has two attributable radio authorizations.⁸⁶ CENPGI therefore prevails based on this first tie-breaker and is the tentative selectee in Group 215.

V. ESTABLISHED LOCAL APPLICANT CHALLENGES

37. As noted previously, all NCE FM applicant point claims must be readily ascertainable from timely-filed application exhibits.⁸⁷ To qualify for the three points as an "established local

⁸² See File No. 0000167130, "Center Cristiano de Vida Eterna San Antonio Other Broadcast Interests.pdf." In this exhibit, CCVESA explains that Martin Guevera has an attributable interest in Centro Cristiano de Vida Eterna (CCVE) and lists 39 licenses held by CCVE. In the tie-breaker section, however, CCVESA only appears to include the 10 full service stations in its count of attributable radio station authorizations. Bureau staff has confirmed that 13 of the listed licenses are for non-fill-in FM translator stations, and therefore, should have been included in CCVESA's count of attributable radio authorizations.

⁸³ See Application File Nos. 0000166670 and 0000166255, Fair Distribution of Service Section, and associated exhibit.

⁸⁴ See *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11462-63.

⁸⁵ See Application File Nos. 0000166271 and 0000166252. EMMI neglected to amend its application to update its number of attributable authorizations, as required under section 1.65 of the rules. See 47 CFR § 1.65; *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11468-69.

⁸⁶ See *2001 NCE MO&O*, 16 FCC Rcd at 5083, para. 25 ("an applicant with no existing stations at the time of application will benefit from its 'zero' stations in tie breakers only until such time as it receives a first authorization.").

⁸⁷ To be considered timely-filed, exhibits must be filed by the close of the filing window. See *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11467 ("Certifications which require the applicant to submit documentation, but which are not supported with any such timely documentation, will not be credited. . . . The Commission will not consider documentation to support a claimed comparative point if it is submitted in an

(continued....)

applicant,” an applicant must demonstrate that it has been local and established in the community to be served continuously for at least two years immediately prior to filing the application.⁸⁸ In NCE MX Groups 76, 104, 106, and 114, the tentative selectees did not timely or sufficiently document its claim as an established local applicant. Accordingly, we rescind the three localism points awarded to each tentative selectee.

38. As stated above, changes made after the close of the filing window cannot enhance or improve an applicant's comparative position and point total.⁸⁹ If an applicant certifies that it does not qualify for one of the point factors, it cannot later amend its application to claim such points, even if the applicant would have qualified for the point it is seeking at the time it filed the application.⁹⁰ In NCE MX Group 122, the tentative selectee initially certified that it did not qualify for either established local applicant or diversity of ownership points. Accordingly, we rescind the three localism points and two points for diversity of ownership awarded to the tentative selectee.

A. NCE MX Group 76

39. *Background.* This group consists of two applications filed by Heritage Baptist Church (HBC) and Sound in Spirit Broadcasting, Inc. (SSBI) to serve the community of Burlington, Iowa.⁹¹ In the *Second Comparative Order*,⁹² the Commission determined that because the HBC and SSBI Applications proposed to serve the same community, they would proceed to a point system analysis.⁹³ The Commission awarded HBC a total of five points — three points as an established local applicant and two points for diversity of ownership.⁹⁴ It awarded SSBI a total of three points—two points for diversity of ownership and one point for the best technical proposal.⁹⁵ Thus, HBC, the applicant with the most points, was identified as the tentative selectee.⁹⁶

40. SSBI filed a Petition to Deny the HBC Application (SSBI Petition).⁹⁷ In the SSBI Petition, SSBI argues that HBC is not entitled to three points as an established local applicant because its claim cannot be ascertained from the localism exhibit in the original HBC Application,⁹⁸ which fails to provide a physical address or headquarters location confirming that HBC is within 25 miles of the reference coordinates of the community to be served.⁹⁹ Specifically, SSBI asserts that the HBC

amendment after the Application Deadline.”); Instructions to FCC Form 2100, Schedule 340 at 15 (“An applicant claiming points as an established local applicant must place supporting documentation in the applicant’s public inspection file and submit to the Commission copies of the documentation.”).

⁸⁸ 47 CFR §§ 73.7000 and 73.7003(b)(1); *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11468.

⁸⁹ 47 CFR § 73.7003(e); *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11468.

⁹⁰ *Id.*

⁹¹ Application File Nos. 0000167422 (HBC Application) and 0000166214 (SSBI Application). HBC amended its application on August 19, 2022 (Amended HBC Application).

⁹² See *Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 22-78, at 14-15, paras. 55-56 (Oct. 25, 2022) (*Second Comparative Order*).

⁹³ *Id.* at 14, para. 55.

⁹⁴ *Id.* at 15, para. 56.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Pleading File No. 0000203828 (filed Nov. 21, 2022).

⁹⁸ HBC Application at Attach. “Heritage Baptist Point System Factors.pdf”.

⁹⁹ SSBI Petition at 4.

Application lists the applicant's address as a post office box,¹⁰⁰ which is insufficient to establish a physical headquarters. Further, although board members' addresses were listed in the application, SSBI asserts that HBC failed to provide any explanation of the officers' length of residence or distance from the Burlington, Iowa, reference coordinates in order to meet the 75% threshold established by section 73.7000 of the Rules.¹⁰¹ Lastly, SSBI asserts that the Amended HBC Application, filed after the close of the filing window, cannot cure HBC's unsupported established local applicant claim.¹⁰²

41. In the HBC Opposition,¹⁰³ HBC argues that it timely filed an exhibit consisting of a screen shot from the Iowa Secretary of State business search showing the establishment date and the address of the registered agent, but inadvertently cropped out the home office section, which lists the same local address as the registered agent.¹⁰⁴ HBC maintains that it amended its original application out of caution to highlight the headquarters address, and to alert Bureau staff to the information that was inadvertently cropped in the original exhibit.¹⁰⁵ HBC also argues that the Bureau should allow minor typographical errors to be rectified, in accordance with a recent NCE MX Group decision.¹⁰⁶

42. *Discussion.* We find that HBC did not sufficiently document its eligibility for points as an established local applicant in its initial application and was, therefore, improperly awarded points under this criterion. As previously stated, every NCE FM applicant claiming points as an established local applicant must certify and document, at the time it files its application, that it has been local and established for at least two years.¹⁰⁷ The failure to timely submit the requisite documentation is fatal to a point claim.¹⁰⁸ Prior to the opening of the November filing window, the Commission cautioned applicants that "the basis for applicant point claims must be readily ascertainable from timely-filed application exhibits."¹⁰⁹ The HBC Application exhibit contains an excerpt, without a heading or source, listing a filing date and the address of a registered agent.¹¹⁰ However, the exhibit lacks a headquarters address, as well as any evidence or statement that the HBC headquarters is within 25 miles of the reference coordinates of the proposed community of license. Likewise, the initial HBC Application failed to provide an address for HBC's headquarters, and the Commission has long held that a post office box cannot serve as headquarters.¹¹¹ Lastly, we will not consider the Amended HBC Application's established

¹⁰⁰ HBC Application at Applicant Information.

¹⁰¹ *Id.* and 47 CFR § 73.7000 (defining "local applicant" to include applicants "having 75% of board members residing within 25 miles of the reference coordinates of the community to be served").

¹⁰² SSBI Petition at 5.

¹⁰³ Pleading File No. 0000204575 (filed Nov. 30, 2022).

¹⁰⁴ HBC Opposition at 1.

¹⁰⁵ *Id.* at 1-2.

¹⁰⁶ *Id.* at 2-3 and *NCE MX Group 39*, Letter Order, DA 22-874 (MB Aug. 22, 2022) (*MX Group 39 Order*).

¹⁰⁷ *See, e.g., NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11465.

¹⁰⁸ *See, e.g., Comparative Consideration of Seven Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Station filed in the February 2010 Window*, Memorandum Opinion and Order, 30 FCC Rcd 5135, 5144, para. 18 (2015) (*Seven NCE Groups Order*); 47 CFR § 73.7003(b) ("based on information provided in each application, each applicant will be awarded a predetermined number of points under the criteria listed...").

¹⁰⁹ *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11467 (advising applicants to review their supporting documents thoroughly before filing).

¹¹⁰ HBC Application at Attach. "Heritage Baptist Point System Factors.pdf" at 2.

¹¹¹ *See Seven NCE Groups Order*, 30 FCC Rcd at 5141-42, para. 17 (finding applicant ineligible for established local applicant points because it provided only a post office box, rather than a primary place of business or primary residence, in its application). Because HBC does not claim that it is eligible for the established local applicant

(continued....)

local applicant exhibit, filed over nine months after the close of the filing window.¹¹² It is well established that an NCE applicant's qualifications for points are established at the close of the filing window and cannot be enhanced after that time.¹¹³ For these reasons, we find that HBC was not entitled to points as an established local applicant. We, therefore, grant the SSBI Petition.

43. Our finding that HBC should not have been awarded points under the established local applicant criterion alters the outcome of the point system analysis for this MX Group. Specifically, without the three points awarded to it under the established local applicant criterion, HBC's total points are reduced from five to two. SSBI therefore prevails with a total of three points,¹¹⁴ and is the new tentative selectee in NCE MX Group 76.

B. NCE MX Group 104.

44. *Background.* This group consists of two applications filed by Johnson County Board of Education (JCBE) and Paintsville Church of Christ (PCC) to serve the community of Paintsville, Kentucky.¹¹⁵ In the *Second Comparative Order*,¹¹⁶ the Commission determined that because the JCBE and PCC Applications proposed to serve the same community, they would proceed to a point system analysis.¹¹⁷

45. JCBE and PCC were each awarded three localism points and two points for diversity of ownership.¹¹⁸ Accordingly, each applicant was credited with a total of five points and proceeded to the tie-breaker analysis.¹¹⁹ Neither applicant prevailed on the first, second, or third (and final) tie-breaker.¹²⁰ Accordingly, JCBE and PCC were both named tentative selectees for MX Group 104, and were directed

points based on the residences of its board members, we need not consider SSBI's argument that HBC failed to demonstrate its eligibility based on this factor.

¹¹² HBC cites the *MX Group 39 Order* in support of its argument that the Bureau should allow typographical application errors to be corrected or amended. As an initial matter, the *MX Group 39 Order* is a Bureau-level decision, and thus is not binding on the Commission. See *Comcast Corp. v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008). The *MX Group 39 Order* is also inapposite because the Bureau did not accept a post-window amendment of comparative points claim documentation; rather, the applicant amended its application to cure an application deficiency concerning reasonable assurance of site availability, which would have been allowed if the Bureau had dismissed the application. See *MX Group 39 Order* at 5, n.29, citing 47 CFR § 73.3522(a)(2); *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776 (1984).

¹¹³ See *2000 NCE Order*, 15 FCC Rcd at 7423 (noting that point system documentation filed at the Commission should be submitted "concurrently with filing"); *NCE LPFM Order*, 34 FCC Rcd at 12522, para. 6 ("We reiterate that the failure to submit documentation establishing local bona fides by the close of the filing window is fatal to an established local applicant point claim."); *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11467 (explaining that the "Commission will not consider documentation to support a claimed comparative point if it is submitted in an amendment after the Application Deadline").

¹¹⁴ See *Second Comparative Order*, *supra* note 92, at 15, para. 56 (awarding SSBI two points for diversity of ownership and one point for the best technical proposal).

¹¹⁵ *MX Groups Public Notice*, 36 FCC Rcd at Attach. A; see also Application File Nos. 0000166282 (JCBE Application) and 0000165543 (PCC Application).

¹¹⁶ *Second Comparative Order* at 15, paras. 71-73.

¹¹⁷ *Id.* at 15, para. 71.

¹¹⁸ *Id.* at 15, para. 72.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 15, para. 73.

to submit a voluntary time-sharing agreement.¹²¹

46. JCBE and John Jason Bennett each subsequently filed Informal Objections to the PCC Application (JCBE Objection¹²² and Bennett Objection,¹²³ respectively). In the JCBE Objection, JCBE argues that PCC is not entitled to three points as an established local applicant because it failed to submit any required documentation to support its localism claim.¹²⁴ The Bennett Objection alleges that the PCC Application is defective and must be dismissed, pursuant to section 73.3513 of the Rules, because it was not signed by an officer of PCC.¹²⁵

47. In the PCC Opposition,¹²⁶ PCC alleges that the supporting documentation verifying its localism claim is contained in its 2015 approved application for a new LPFM license (2015 LPFM License Application).¹²⁷ PCC alleges that its cross-reference to the 2015 LPFM License Application, along with information contained within the PCC Application, including its street address and addresses of its directors, serve as sufficient documentation to qualify for points as an established local applicant.¹²⁸

48. In the JCBE Reply,¹²⁹ JCBE reiterates its argument that the information contained in the PCC Application is insufficient to establish PCC as a local entity.¹³⁰ JCBE argues that PCC cannot rely on information contained in the 2015 LPFM License Application, or any of its previously filed applications, to establish its eligibility for localism points.¹³¹

49. *Discussion.* We find that PCC did not sufficiently document its eligibility for points as an established local applicant and was, therefore, improperly awarded points under this criterion. As previously stated, every NCE FM applicant claiming points as an established local applicant must certify and document, at the time it files its application, that it has been local and established for at least two years.¹³² The failure to timely submit the requisite documentation is fatal to a point claim.¹³³

50. The Commission made clear, prior to the opening of the November 2021 filing window, that “the basis for applicant point claims must be readily ascertainable from timely-filed application exhibits.”¹³⁴ We do not look beyond the four corners of the application.¹³⁵ PCC therefore cannot merely rely on information contained in the 2015 LPFM License Application to establish its current eligibility for

¹²¹ *Id.*

¹²² Pleading File No. 0000207579 (filed Jan. 23, 2023).

¹²³ Pleading File No. 0000210720 (filed Feb. 14, 2023).

¹²⁴ JCBE Objection.

¹²⁵ Bennett Objection; *see also* 47 CFR § 73.3513. Because we are dismissing the PCC Application on other grounds, we need not address the Bennett Objection’s section 73.3513 argument.

¹²⁶ Pleading File No. 0000211025 (filed Feb. 19, 2023) (PCC Opposition).

¹²⁷ PCC Opposition at 1 (*citing* Application File No. BLL-20151112XQS).

¹²⁸ *Id.*

¹²⁹ Pleading File No. 0000211462 (filed Feb. 27, 2023) (JCBE Reply).

¹³⁰ *Id.* at 1-3.

¹³¹ *Id.* at 3-5.

¹³² *See, e.g., NCE Procedures Public Notice, supra* note 32.

¹³³ *See, e.g., Seven NCE Groups Order*, 30 FCC Rcd at 5142, para. 18.

¹³⁴ *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11467 (advising applicants to review their supporting documents thoroughly before filing).

¹³⁵ *Seven NCE Groups Order*, 30 FCC Rcd at 5141-42, para. 17 (“We do not look beyond the four corners of the application.”); 47 CFR § 73.7003(b) (“based on information provided in each application, each applicant will be awarded a predetermined number of points under the criteria listed”).

localism points, and there is insufficient information in the four corners of its application to support the conclusion that PCC qualifies as an established local applicant. Specifically, the PCC Application provided nothing more than a post office box as its address,¹³⁶ and the Commission has long held that a post office box cannot serve as a headquarters.¹³⁷ Similarly, while the PCC Application listed the physical addresses for each of its four board of directors, it failed to provide documentation establishing length of residence of the board members or documentation that 75% of its board members reside within 25 miles of the reference coordinates of the proposed community of license.¹³⁸ Accordingly, we find that PCC was not entitled to points as an established local applicant. We, therefore, grant the JCBE Objection.

51. Our finding that PCC should not have been awarded points under the established local applicant criterion alters the outcome of the point system analysis for this MX Group. Specifically, without the three localism points, PCC's total points are reduced from five to two. Accordingly, JCBE prevails with a total of five points.¹³⁹ The JCBE Application is therefore the sole tentative selectee in MX Group 104, and we grant the JCBE Application and dismiss the PCC Application as ordered herein.¹⁴⁰

C. NCE MX Group 106

52. *Background.* This group consists of two applications filed by Radio Sharon Foundation (RSF) and Horizon Christian Fellowship (HCF) to serve the community of Narragansett Pier, Rhode Island.¹⁴¹ In the *Third Comparative Order*, the Commission determined that because the RSF and HCF Applications proposed to serve the same community, the two applicants would proceed to a point system analysis.¹⁴² The Commission awarded RSF a total of five points – three points as an established local applicant and two points for diversity of ownership.¹⁴³ It awarded HCF a total of three points – two points for diversity of ownership and one point for the best technical proposal.¹⁴⁴ Thus, RSF, the applicant with the most points, was identified as the tentative selectee.¹⁴⁵

53. HCF filed a Petition to Deny the RSF Application (HCF Petition),¹⁴⁶ arguing that RSF is

¹³⁶ PCC Application at Applicant Information.

¹³⁷ See *Seven NCE Groups Order*, 30 FCC Rcd at 5141-42, para. 17 (finding applicant ineligible for established local applicant points because it provided only a post office box, rather than a primary place of business or primary residence, in its application).

¹³⁸ PCC Application at Parties to the Application.

¹³⁹ See *Second Comparative Order*, *supra* note 92, at 15, para. 72 (awarding JCBE three localism points and two points for diversity of ownership).

¹⁴⁰ See, e.g., *Seven NCE Groups Order*, 30 FCC Rcd at 5153, para. 51 (granting application of time-share tentative selectee and dismissing application of competing time-share tentative selectee where evaluation of tie-breakers resulted in first tentative selectee prevailing).

¹⁴¹ See Application File Nos. 0000167597 (RSF Application) and 0000167259 (HCF Application).

¹⁴² *Comparative Consideration of 34 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 23-5, at 16, para. 57 (Jan. 24, 2023) (*Third Comparative Order*).

¹⁴³ *Id.* at 16, para. 58.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Pleading File No. 0000207900 (filed Jan. 25, 2023). Rhode Island Public Radio d/b/a The Public's Radio (TPR) also filed a Petition to Deny the RSF Application (TPR Petition). Pleading File No. 0000208696 (filed Jan. 30, 2023). TPR argues that the RSF Application should be denied because the facilities proposed in the RSF Application would result in prohibited overlap with facilities proposed by TPR in its application for a new NCE FM station in Kingston, Rhode Island (TPR Application), and that the TPR Application is entitled to first come/first

(continued....)

not entitled to three points as an established local applicant because RSF listed incorrect addresses for six of its eight directors, making it appear that 75% of its directors lived within 25 miles of Narragansett Pier.¹⁴⁷

54. In its Opposition to the HCF Petition,¹⁴⁸ RSF acknowledges that it listed incorrect addresses for six of its eight directors on the RSF Application.¹⁴⁹ It asserts that the six directors with incorrect addresses “had a present intention to relocate to the Narragansett area and were actively planning to rent the properties designated therein but familial circumstances caused those board members to abandon those plans.”¹⁵⁰ RSF also argues that “[i]t was not our intention to use these addresses to qualify for the ‘established local applicant’ point[s]” and that it instead intended to qualify for the points per its headquarters located at 400 Reservoir Ave, Suite 3L, Providence, Rhode Island (Reservoir Address).¹⁵¹ RSF states that the Reservoir Address is within 25 miles of Narragansett Pier, and that its 2019 Rhode Island annual corporate report (2019 Annual Report), which was filed with the RSF Application, shows that the Reservoir Address was its headquarters for the two years immediately prior to filing the RSF Application.¹⁵²

55. In its Reply,¹⁵³ HCF argues that RSF’s “sudden shift” to claiming localism based on the location of its headquarters instead of its directors’ home addresses is an attempt to divert the Commission’s attention from RSF’s use of incorrect addresses and the real location of its headquarters, which the RSF Application clearly indicates is 25 Woodman St., Providence, Rhode Island (Woodman Address), a location that, being over 25 miles from Narragansett Pier, precludes RSF from established local applicant status based on its headquarters.¹⁵⁴

56. *Discussion.* We find that RSF did not sufficiently document its eligibility for points as an established local applicant and was, therefore, improperly awarded points under this criterion. As previously stated, every NCE FM applicant claiming points as an established local applicant must certify and document, at the time it files its application, that it has been local and established for at least two years.¹⁵⁵ The failure to timely submit the requisite documentation is fatal to a point claim.¹⁵⁶

57. We disagree with RSF’s argument that the 2019 Annual Report is sufficient documentation to entitle RSF to three points as an established local applicant. RSF included three Rhode Island annual corporate reports in the RSF Application: (1) the 2019 Annual Report; (2) its 2020 annual

serve processing, which cuts off the RSF Application. *Id.* at 2; see Application File No. 0000161099 (filed Sept. 29, 2021). In its Opposition, RSF does not address the merits of TPR’s argument, and instead asserts that the TPR Petition is moot because the TPR Application was dismissed on February 1, 2023, and that dismissal is now final. See Pleading File No. 0000210067 at 2 (filed Feb. 2, 2023); see also *Rhode Island Public Radio*, Application File No. 0000161099, Letter Order, Ref. No. 1800B3-JDB (MB Feb. 1, 2023). We agree with RSF that the TPR Petition is moot, and dismiss it as such.

¹⁴⁷ HCF Petition at 2-3.

¹⁴⁸ Pleading File No. 0000210133 (filed Feb. 3, 2023).

¹⁴⁹ *Id.* at 2.

¹⁵⁰ *Id.*

¹⁵¹ Declaration of Keila Maria Perdomo Belliard, Exh. B to Opposition; Declaration of Quilvio Perdomo, Exh. A to Opposition (Perdomo Declaration).

¹⁵² See Perdomo Declaration.

¹⁵³ Pleading File No. 0000210590 (filed Feb. 9, 2023).

¹⁵⁴ *Id.* at 3; Engineering Statement of Bob Moore, Exh. B to Reply.

¹⁵⁵ See e.g., *NCE Procedures Public Notice*, *supra* note 32.

¹⁵⁶ See, e.g., *Seven NCE Groups Order*, 30 FCC Rcd at 5142, para. 18.

report (2020 Annual Report); and (3) its 2021 annual report (2021 Annual Report).¹⁵⁷ The 2019 Annual Report lists the Reservoir Address as RSF's principal place of business.¹⁵⁸ However, the 2020 and 2021 Annual Reports list the Woodman Address as its principal place of business.¹⁵⁹ As a result, RSF has not shown that its headquarters was located at the Reservoir Address for the two years immediately prior to filing the RSF Application.¹⁶⁰ In contrast, the documentation provided in the RSF Application indicates that the Woodman Address was RSF's headquarters during this time.¹⁶¹ In addition, RSF acknowledges that the home addresses of its directors does not entitle it to points as an established local applicant.¹⁶² Accordingly, we find that RSF was not entitled to points as an established local applicant.

58. Our finding that RSF should not have been awarded points under the established local applicant criterion alters the outcome of the point system analysis for this MX Group. Specifically, without the three localism points, RSF's total points are reduced from five to two. HCF therefore prevails with a total of three points, and is the new tentative selectee in MX Group 106.¹⁶³

59. While we resolve this group based on points, the information in the record suggests that RSF may have violated section 1.17 of the rules and may have engaged in misrepresentation or lack of candor pertaining to its use of incorrect addresses in the RSF Application.¹⁶⁴ The Commission therefore directs the Bureau to investigate this matter, including RSF's character qualifications, both in connection with the RSF Application and RSF's pending assignment application to acquire an FM translator station in Monticello, New York.¹⁶⁵

D. NCE MX Group 114

60. *Background.* This group consists of two applications filed by Evangelistic Knights of Our Lady, Inc. (EKL) and Full Potential (FP) to serve different communities in Michigan.¹⁶⁶ In the *First Comparative Order*,¹⁶⁷ the Commission determined that the EKL and FP Applications had comparable

¹⁵⁷ RSF Application at Attach. "Las[t] 3 years An[n]ual Reports.pdf" (RSF Annual Reports Attachment).

¹⁵⁸ The RSF Application does not contain any other documentation indicating that the Reservoir Address is RSF's headquarters. See RSF Application.

¹⁵⁹ RSF Annual Reports Attachment at 2-3.

¹⁶⁰ See 47 CFR §§ 73.7000 and 73.7003(b)(1); see also *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11463.

¹⁶¹ See RSF Annual Reports Attachment at 2-3. Additionally, RSF filed an annual report for 2022 on August 15, 2022, an annual report for 2023 on December 21, 2022 (2023 Annual Report), and an amended annual report for 2023 on January 25, 2023, which all listed the Woodman Address as RSF's principal place of business. These reports are publicly accessible at the Rhode Island Department of State website. <https://business.sos.ri.gov/CorpWeb/CorpSearch/CorpSearch.aspx>. RSF again amended the 2023 Annual Report on February 5, 2023, to identify the Reservoir Address as its principal place of business. Thus, RSF's principal place of business from 2020 to 2023 was the Woodman Address, and RSF only identified the Reservoir Address as its headquarters after the filing of the HCF Petition.

¹⁶² Opposition at 2.

¹⁶³ We note that on May 16, 2023, RSF filed an Informal Objection to the HCF application. See Pleading No. 0000214865. We generally do not consider objections at this stage, but rather, review the merits of any objection if/when the subject application becomes accepted for filing. We will review the merits of RSF's objection after the new tentative selectee's application is accepted for filing.

¹⁶⁴ See 47 CFR § 1.17.

¹⁶⁵ Application File No. 0000211357 (filed Feb. 24, 2023).

¹⁶⁶ *MX Groups Public Notice*, 36 FCC Rcd at Attach. A; see also Application File Nos. 0000167505 (EKL Application) and 0000167777 (FP Application).

¹⁶⁷ See *First Comparative Order*, *supra* note 6, at 17-18, paras. 57-58.

fair distribution of service claims, and therefore, proceeded to a point system analysis.¹⁶⁸ The Commission awarded EKL a total of five points — three points as an established local applicant and two points for diversity of ownership. It awarded FP a total of three points—two points for diversity of ownership and one point for the best technical proposal.¹⁶⁹ Thus, EKL was awarded the most points and identified as the tentative selectee.¹⁷⁰

61. Albert Adam David (David) filed an Informal Objection to the EKL Application (David Objection),¹⁷¹ and FP filed a Petition to Deny the EKL Application (FP Petition).¹⁷² In the David Objection, David argues that EKL is not entitled to three points as an established local applicant because it was incorporated on October 18, 2021, less than two years prior to filing its application.¹⁷³ David also argues that EKL provides no documentation to support its claim that it is a continuation of an older entity, Escanaba Knights of Columbus (EKC), founded in 1902, or that EKC satisfies the qualification requirements for an established local applicant.¹⁷⁴ In the FP Petition, FP argues the Commission should rescind EKL’s established local applicant points and designate FP as the tentative selectee because it verified and concurs with David’s claims that EKL has not provided any documentation to establish a continuous relationship between EKL and EKC.¹⁷⁵ FP also notes that the EKL board members disclosed in the EKL Application do not match those of the EKC officers listed on EKC’s website, and the entities have different addresses and telephone numbers.¹⁷⁶

62. In the EKL Opposition,¹⁷⁷ EKL argues that the David Objection and the FP Petition are procedurally defective because neither David nor FP have established standing to object to the EKL Application, and both pleadings lack either an affidavit or declaration under penalty of perjury.¹⁷⁸ EKL further argues that the incorporation date is not the only evidence or determinative factor of its established local presence in the proposed community.¹⁷⁹ EKL states that its incorporation was not meant “to establish a new and independent entity, but rather to comply with the relatively new FCC emphasis on incorporation as a means of demonstrating government recognition by a state as a nonprofit in good standing.”¹⁸⁰ EKL argues that the *LPFM AFR MO&O* presented a challenge for Catholic entities because “many have not incorporated and have little in the way of state recognition of their unique status,” but sought incorporation following the release of the *LPFM AFR MO&O* in order to ensure their eligibility for an NCE license.¹⁸¹ EKL states that it in particular has existed in the community for decades, had not

¹⁶⁸ *Id.* at 17-18, para. 57.

¹⁶⁹ *Id.* at 18, para. 58.

¹⁷⁰ *Id.*

¹⁷¹ Pleading File No. 0000197765 (filed Aug. 16, 2022).

¹⁷² Pleading File No. 0000199130 (filed Sep. 1, 2022).

¹⁷³ David Objection at 1. David provides a screenshot of the website of the State of Michigan Department of Licensing and Regulatory Affairs, which shows that EKL was incorporated on October 18, 2021.

¹⁷⁴ *Id.* at 1-2.

¹⁷⁵ FP Petition at 1-2.

¹⁷⁶ *Id.* See also K of C Council #640, Officers, <https://www.kofc640.org/640-officers> (accessed Oct. 25, 2022).

¹⁷⁷ Pleading File No. 0000202208 (filed Oct. 11, 2022) (EKL Opposition).

¹⁷⁸ *Id.* at 1-3.

¹⁷⁹ *Id.* at 4.

¹⁸⁰ *Id.* at 4 (citing *Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13398-99, paras. 23-24 (2013) (*LPFM ARF MO&O*)).

¹⁸¹ EKL Opposition at 4-5.

previously found incorporation necessary, but did so to ensure it was recognized as an eligible nonprofit entity.¹⁸² EKL argues that this desire to incorporate to demonstrate eligibility should not preclude an applicant from claiming that it is also an established local applicant.¹⁸³ Finally, EKL states that EKC is not the applicant, and therefore its board's variance from EKL's board is irrelevant.¹⁸⁴

63. In the FP Reply,¹⁸⁵ FP argues that the EKL Opposition is untimely because it should have been filed by September 14, 2022.¹⁸⁶ FP also argues that it has standing as a mutually exclusive applicant to EKL, and accordingly the Commission should not treat FP's filing as an informal objection.¹⁸⁷ Finally, FP argues EKL's Opposition does not offer any evidence to prove a link between EKL and EKC.¹⁸⁸

64. *Discussion. Procedural Issues.* Initially, we reject EKL's procedural arguments as grounds for dismissal of the David Objection and the FP Petition. It is well settled that standing is not required to file an informal objection—such as the David Objection.¹⁸⁹ Additionally, as a mutually exclusive applicant with EKL, FP has standing to file a petition to deny.¹⁹⁰ We further reject EKL's argument that the pleadings should be dismissed pursuant to section 1.16 and 1.52 of the rules because they were not verified. The facts set forth in the David Objection and the FP Petition are those of which the Commission may take official notice because they are all set forth in the EKL Application.¹⁹¹ Additionally, we find that because David and FP filed their respective Objection and Petition using the Commission's Licensing and Management System, which includes the required certifications, the pleadings were properly verified, and therefore, satisfy the requirements of section 1.52.¹⁹² Finally, in the interest of reviewing a complete record, we also reject FP's argument that we should not consider the EKL Opposition because it was not timely filed. We thus consider the arguments raised in the David Objection, the FP Petition, and the EKL Opposition.

65. Established Local Applicant Documentation. We find that EKL did not sufficiently

¹⁸² EKL Opposition at 5.

¹⁸³ *Id.* at 5-7. EKL argues that forcing such a choice on Catholic applicants would be a violation of the Religious Freedom Restoration Act of 1993. *See* 47 U.S.C. § 2000bb *et. seq.*

¹⁸⁴ *Id.* at 6-7.

¹⁸⁵ Pleading File No. 0000202775 (filed Oct. 21, 2022) (FP Reply).

¹⁸⁶ FP Reply at 1-2

¹⁸⁷ *Id.* at 2-3.

¹⁸⁸ *Id.* at 3-4.

¹⁸⁹ *See* 47 CFR § 73.3587 (requirements for an informal objection); *Chapin Enterprises, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 4250, 4251, para. 3 (2014).

¹⁹⁰ *The Trustees of Indiana University*, Memorandum Opinion and Order, 8 FCC Rcd 5555, 5557, para. 11 (1993) (mutually exclusive applicant in a proceeding has standing to file a petition to deny tentative selectee's application).

¹⁹¹ The key facts alleged in the David Objection and FP Petition relate to the specific documentation submitted in the EKL Application to support its claim as an established local applicant, its date of incorporation, and board members. Because this information is either part of the EKL Application and, therefore, publicly available through the Commission's Licensing and Management System, or accessible through either the websites of the State of Michigan Department of Licensing and Regulatory Affairs or the Knights of Columbus, we can and do take official notice of these facts. The absence of supporting affidavits, therefore, is not a procedural defect. *See, e.g., Seven NCE Groups Order*, 30 FCC Rcd at 5143, para. 21 (affidavit not required when petition relies on facts of which official notice may be taken). *See also* 47 U.S.C. § 309(d)(1) ("Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof.").

¹⁹² *See, e.g., Windy City Broad., LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 22-276, at 2 (MB Mar. 15, 2022) (finding that an objection was properly verified when filed using the Commission's Licensing and Management System).

document its eligibility for points as an established local applicant and was, therefore, improperly awarded points under this criterion. Every NCE FM applicant claiming points as an established local applicant must certify and document, at the time it files its application, that it has been local and established for at least two years.¹⁹³ The failure to timely submit the requisite documentation is fatal to a point claim.¹⁹⁴ The EKL Application merely contains an exhibit that states that EKL, the “newly incorporated manifestation of the previously unincorporated association, the [EKC], has been established locally in the community for more than a century. The [EKC] were chartered on January 19, 1902. Thus, [EKL] has been established local for nearly 120 years.”¹⁹⁵ However, EKL neglected to provide any concrete documentation to verify that EKC was in fact established in 1902,¹⁹⁶ or to establish the link between EKL and ETC and demonstrate that EKL is, as claimed, the “incorporated manifestation” of EKC. There is not sufficient information in the four corners of the application to support the conclusion that EKL qualifies as an established local applicant. Accordingly, we find that EKL was not entitled to points as an established local applicant.¹⁹⁷ We, therefore, grant the David Objection and grant in part, the FP Petition.

66. Our finding that EKL is not entitled to any points under the established local applicant criterion alters the outcome of the point system analysis for this MX Group. Specifically, without the points awarded to it under the established local applicant criterion, EKL’s awarded points are reduced from five to two. FP therefore prevails with a total of three points, and is the new tentative selectee in NCE MX Group 114.

E. NCE MX Group 122

67. *Background.* This group consists of two applications filed by Bible Broadcasting Network, Inc. (BBNI) and Grand Forks Bible Study Group (GFBS) to serve the community of Grand Forks, North Dakota.¹⁹⁸ In the *Second Comparative Order*,¹⁹⁹ the Commission determined that because the BBNI and GFBS Applications proposed to serve the same community, they would proceed to a point system analysis.²⁰⁰ The Commission awarded GFBS a total of five points — three points as an established local applicant and two points for diversity of ownership.²⁰¹ It awarded BBNI a total of two points for diversity of ownership.²⁰² Thus, the Commission identified GFBS as the tentative selectee.²⁰³

68. BBNI filed a Petition to Deny the GFBS Application (BBNI Petition),²⁰⁴ arguing that

¹⁹³ See, e.g., *NCE Procedures Public Notice*, *supra* note 32.

¹⁹⁴ See, e.g., *Seven NCE Groups Order*, 30 FCC Rcd at 5144, para. 18; 47 CFR § 73.7003(b) (“based on information provided in each application, each applicant will be awarded a predetermined number of points under the criteria listed....”).

¹⁹⁵ EKL Application, Ownership Diversity & Established Local Exhibit.

¹⁹⁶ In the EKL Opposition, EKL provides a copy of a charter for EKC which shows that it was established in 1902. Opposition at Exhibit B. Because this document was not provided at the time of filing, we will not consider it.

¹⁹⁷ In light of our finding that EKL failed to provide adequate documentation to support its claim for established local applicant points, we need not address the additional arguments raised in the Opposition.

¹⁹⁸ See Application File Nos. 0000167299 (BBNI Application) and 0000167114 (GFBS Application). GFBS amended its application on January 28, 2022 (Amended GFBS Application).

¹⁹⁹ *Second Comparative Order*, *supra* note 92, at 18, paras. 74-75.

²⁰⁰ *Id.* at 18, para. 74.

²⁰¹ *Id.* at para. 75.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ Pleading File No. 0000204160 (filed Nov. 22, 2022).

GFBS is not entitled to either established local applicant or diversity of ownership points because it certified that it did not qualify for points under either criterion in the original GFBS Application.²⁰⁵ BBNI also asserts that the Amended GFBS Application, in which GFBS references exhibits attached to the original GFBS Application, and certifies that it is eligible for localism and diversity points, cannot be considered because it was filed after the close of the filing window, and it enhances GFBS's comparative status.²⁰⁶ BBNI further cites to a decision in which the Commission rejected an applicant's late-filed amendment because it constituted a prohibited attempt to enhance the applicant's comparative position.²⁰⁷

69. In the GFBS Opposition,²⁰⁸ GFBS acknowledges that its certifications in the original GFBS Application were inconsistent with its exhibits, but argues that it corrected the oversight with the Amended GFBS Application, which did not upgrade its status because it timely filed localism and diversity exhibits in its original application.²⁰⁹ GFBS further argues that its situation is distinguishable from the decision BBNI cites because there, the applicant made no points showing in its original application, whereas the original GFBS Application included localism and diversity exhibits.²¹⁰

70. In the BBNI Reply,²¹¹ BBNI reiterates that GFBS is not entitled to any points because in the original GFBS Application GFBS certified that it did not qualify for either established local applicant or diversity of ownership points.²¹² BBNI maintains that the Amended GFBS Application cannot be considered because it was filed well after the close of the filing window deadline.²¹³ BBNI also argues that the cases cited in the GFBS Opposition are unpersuasive because none hold that an applicant can enhance its comparative position after the filing deadline.²¹⁴

71. *Discussion.* We find that because GFBS did not certify that it qualified for established local applicant or diversity of ownership points by the close of the filing window, it was improperly awarded points under these criteria. As previously stated, every NCE FM applicant claiming points as an established local applicant or under diversity of ownership must certify, *at the time it files its application*, that it qualifies for those points.²¹⁵ GFBS neglected to do this, and therefore, should not have been awarded localism or diversity points.²¹⁶ Even if, as GFBS asserts, the exhibits in its original application demonstrate its eligibility for localism and diversity points, GFBS's conflicting certifications preclude reliance upon the exhibits. Moreover, the Commission and Bureau have repeatedly rejected applicant attempts to enhance comparative position with post-filing window amendments.²¹⁷ Accordingly, we will

²⁰⁵ BBNI Petition at 2 and Exh. A.

²⁰⁶ *Id.* at 2-3 and Exhs. B and C.

²⁰⁷ *Id.* at 3-4.

²⁰⁸ Pleading File No. 0000204909 (filed Dec. 7, 2022).

²⁰⁹ GFBS Opposition at 1-4 and Attachs. 1-4.

²¹⁰ *Id.* at 4-6.

²¹¹ Pleading File No. 0000205628 (filed Dec. 16, 2022).

²¹² BBNI Reply at 1-2.

²¹³ *Id.* at 2.

²¹⁴ *Id.* at 3-4.

²¹⁵ See *NCE Procedures Public Notice*, *supra* note 32.

²¹⁶ GFBS Application at "Point System Factors/Tiebreakers."

²¹⁷ See *Comparative Consideration of Seven Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Station Filed in the February 2010 Window*, Memorandum Opinion and Order, 30 FCC Rcd 5161, 5169-70, paras. 26-27 and n.66 (2015) (finding that allowance of late submission of requested information in comparative cases "would 'inevitably lead to abuse of the Commission's processes, applicant gamesmanship, and unfair advantage'"). See also *Comparative Consideration of 52 Groups of Mutually*

(continued....)

not consider the new localism and diversity certifications in the Amended GFBS Application, filed over two months after the close of the filing window. For these reasons, we find that GFBS was not entitled to established local applicant or diversity of ownership points.²¹⁸ We, therefore, grant the BBNI Petition.

72. Our finding that GFBS should not have been awarded localism or diversity points alters the outcome of the point system analysis for this MX Group. Specifically, without the points awarded to GFBS under these criteria, GFBS's awarded points are reduced from five to zero. BBNI therefore prevails with a total of two points, and is the new tentative selectee in NCE MX Group 122.

VI. TIE-BREAKER CHALLENGE

73. As noted earlier, our rules provide for a system of tie-breakers if more than one application receives the same number of points.²¹⁹ With regard to applications for NCE radio facilities, the applicant with the fewest existing radio authorizations (licenses and construction permits, commercial and NCE) prevails on the first tie-breaker. The applicant with the fewest pending new and major change radio applications prevails on the second tie-breaker.²²⁰

74. Additionally, after the close of the filing window, each applicant must continue to maintain the accuracy and completeness of the information in its application and notify the Commission of any substantial changes that may be of decisional significance to the application.²²¹ Specifically, an NCE FM applicant is required, pursuant to section 1.65 of the rules, to update its number of authorizations within the Tiebreaker Section of its application if/when one of its pending applications is granted.²²² In MX Group 59A, the tentative selectee did not update its number of authorizations to reflect recent grants. Accordingly, we conduct a new tie-breaker analysis based on each applicant's current and accurate number of authorizations.

A. NCE MX Group 59A

75. *Background.* This group consists of seven applications to serve different communities in Florida. Big Bend Heritage Music Association, Inc. (BBH) has two applications in the group, one for Perry (BBH-Perry), and the other for Cross City (BBH-Cross City). The other applicants are: Elijah Radio (ER) and Learning Avenue, Inc. (LAI), each for Live Oak; Florida Educational Radio, Inc. (FER) for Lee; DND Ministries (DND) for Mayo; and Central Baptist Church of Ocala, Inc. (CBCO) for West Lake.²²³ In the *First Comparative Order*, the Commission determined that the ER and CBCO

Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window, Memorandum Opinion and Order, 25 FCC Rcd 8793, 8799 (2010) (finding that applicant's post-filing window amendment was a prohibited attempt to enhance, where the amendment claimed, for the first time, eligibility for a fair distribution preference).

²¹⁸ See *Comparative Consideration of 37 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the February 2010 and October 2007 Filing Window*, Memorandum Opinion and Order, 26 FCC Rcd 7008, 7044 (2011) (finding that the initial tentative selectee should not have been awarded localism points because it certified "no" to the established local application certification in its initial application, and amended to correct its error after the close of the filing window); *Network of Glory*, Letter Order, 25 FCC Rcd 7311 (MB 2007) (rejecting an amendment that enhanced an applicant's comparative standing although the amendment allegedly served to only correct mistaken data or errors in the initial application).

²¹⁹ See *supra* paras. 19-20.

²²⁰ See 47 CFR § 73.7003(c)(1),(2).

²²¹ See 47 CFR § 1.65; *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11468-69.

²²² *Id.*; see, e.g., *2001 NCE MO&O*, 16 FCC Rcd at 5083, para. 25.

²²³ See *MX Groups Public Notice*, 36 FCC Rcd at Attach. A; see also Application File Nos. 0000167035 (ER Application) and 0000166339 (CBCO Application). Group 59, which originally contained 17 applications, was

(continued....)

Applications had comparable fair distribution of service claims, and therefore, analyzed ER and CBCO under the point system.²²⁴ The Commission awarded both ER and CBCO a total of two points, each for diversity of ownership, and therefore, proceeded to the tie-breaker analysis.²²⁵ ER prevailed in the first tie-breaker analysis based on its certification that it had an attributable interest in one radio authorization as compared to CBCO's attributable interest in two radio authorizations. Thus, the Commission identified ER as the tentative selectee of Group 59A.²²⁶

76. CBCO filed an informal objection against the ER Application (CBCO Objection), arguing that ER should have been eliminated under the first tie-breaker analysis.²²⁷ Specifically, CBCO asserts that ER failed to update the ER Application to reflect that four of its pending applications for new NCE FM stations from the 2021 NCE Window had been granted.²²⁸ Additionally, CBCO notes that, as of the date of the CBCO Objection, ER holds an attributable interest in seven radio authorizations, instead of one, as stated in the ER Application.²²⁹ CBCO, therefore, urges the Commission to designate CBCO as the new tentative selectee for Group 59A. ER did not file an opposition to the CBCO Objection.

77. *Discussion.* We find that ER was improperly favored in the first tie-breaker analysis. FCC Form 2100, Schedule 340, requires an applicant to certify the number of attributable interests it holds in broadcast station authorizations "as of the date of filing."²³⁰ At the time ER filed its Application, ER correctly certified that it had attributable interests in one existing broadcast authorization.²³¹ ER's status under the first tie-breaker, however, changed when it was granted six authorizations prior to its designation as the tentative selectee in the *First Comparative Order*.²³² After the adoption and release of the *First Comparative Order*, ER was granted one additional authorization, resulting in a current total of eight authorizations.²³³

78. With respect to post-filing window changes, the Commission has made clear that an applicant's maximum point eligibility and tie-breaker standing is established as of the close of the filing

bifurcated as a result of a technical amendment. The other applications in the MX group were initially evaluated as Group 59B in a previous order and are re-evaluated herein. See *13 Group 307(b) Order*, *supra* note 6.

²²⁴ See *First Comparative Order*, *supra* note 6, at 7-8, paras. 32-34. In the *First Comparative Order*, the Commission also eliminated FER, LAI, and BBH-Perry because each did not claim eligibility for a fair distribution preference, eliminated DND because it failed to provide sufficient documentation to support its fair distribution claim, and eliminated BBH-Cross City because ER's next best proposal would serve at least 5,000 more people.

²²⁵ *Id.*

²²⁶ *Id.* at 8, para 34.

²²⁷ Pleading File No. 0000198584 (filed Aug. 29, 2022).

²²⁸ CBCO Objection at 1-2. ER amended its Application on January 28, 2022, and April 5, 2022, prior to the adoption of the *First Comparative Order*, but neglected to reflect the recent grants.

²²⁹ *Id.* at 1.

²³⁰ Form 2100, Schedule 340, "Existing Authorizations."

²³¹ See ER Application. The ER Application detailed ER's attributable interest in FM station WSJL, Bessemer, Alabama.

²³² See Application File No. 0000167024 (granted Dec. 22, 2021); Application File No. 0000167036 (granted Jan. 11, 2022); Application File No. 0000166790 (granted Jan. 20, 2022); Application File No. 0000167023 (granted Feb. 8, 2022); Application File No. 0000167252 (granted Apr. 8, 2022); Application File No. 0000167031 (granted May 10, 2022).

²³³ See Application File No. 0000167058 (granted Sept. 2, 2022).

window, but can be reduced due to subsequent events.²³⁴ In the context of the tie-breaker process, the Commission stated specifically that:

Similarly, for tie breakers, the applicant's best position is established at the time of application, but can be reduced. For example, in our primary tie breaker, which selects the applicant with the fewest number of broadcast authorizations at the time of filing, an applicant cannot enhance its position by selling one of its existing stations, but can diminish its position by acquiring an additional station. Thus, an applicant with no existing stations at the time of application will benefit from its "zero" stations in tie breakers *only until such time as it receives a first authorization*. It will be required, pursuant to 47 C.F.R. § 1.65, to update its pending applications and so will not be able to continue claiming zero authorizations, when it has, in fact, already had applications granted in several proceedings, perhaps now surpassing a tied competing applicant in terms of stations authorized.²³⁵

79. ER was obligated to update its number of authorizations, but failed to do so. We, therefore, grant the CBCO Objection and conduct a new tie-breaker analysis considering ER's correct and current attributable interests in eight radio authorizations, and CBCO's attributable interests in two radio authorizations. CBCO prevails under the first tie-breaker. We therefore rescind our tentative selection of the ER Application and identify the CBCO Application as the new tentative selectee of Group 59A.

VII. NEXT STEPS

80. **Acceptability Studies and Filing of Petitions.** Once the Bureau or Commission identifies a tentative selectee pursuant to the fair distribution analysis or point system, the next step is to consider whether the selectee's application has defects.²³⁶ The Commission has studied the application of each tentative selectee identified herein for application defects. Each tentative selectee identified in this Order and its Appendix appears to be fully qualified to become the licensee of the new NCE FM station it has proposed. We tentatively conclude that the grant of these applications would serve the public interest, convenience and necessity. Accordingly, upon the release of this Order, the tentative selectees are accepted for filing. This triggers a 30-day period for the filing of petitions to deny.²³⁷

81. Any argument that the tentatively selected application should not be granted should be raised in such a petition, even if the objection relates only indirectly to the tentative selectee's qualifications. For example, an applicant that concedes that the tentative selectee is qualified for the points received but believes its own proposal should have received a greater number of points than the tentative selectee's would make its argument in a petition to deny. Likewise a disappointed applicant that believes the tentative selectee should have received fewer points would make such an argument in a petition to deny. Parties should not raise such matters as petitions for reconsideration of the instant Order because the point hearings herein take no final action on any application, and petitions for reconsideration

²³⁴ 2001 NCE MO&O, 16 FCC Rcd at 5082-5083. Our rules require applicants to inform us of material changes in their applications after the time of filing. 47 CFR § 1.65. An applicant's maximum points and its standing in a tie breaker can go down, but not up, as a result of changes made after filing. *See also* 47 CFR § 73.7003(e), (f).

²³⁵ 2001 NCE MO&O, 16 FCC Rcd at 5083 (emphasis added).

²³⁶ If a tentative selectee's application is found unacceptable for filing, it is dismissed. The applicant then has one opportunity to submit a curative amendment and a petition for reconsideration requesting reinstatement *nunc pro tunc* within 30 days, provided that the amendment is minor and does not alter the fair distribution analysis. *See* 47 CFR § 73.3522(b)(1). A tentative selectee that is unable to cure the defect is disqualified. 47 CFR § 73.7004(d).

²³⁷ 47 CFR § 73.7004.

do not lie against such interlocutory decisions.²³⁸

82. **Forthcoming Staff Action.** We direct the Bureau staff, once the petition to deny period has run, to conduct a final study of each tentatively selected application in accordance with its routine processing procedures. The staff studies should consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of the tentatively selected application would serve the public interest. If the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact, and that a grant of the application would be consistent with the public interest, convenience, and necessity, it shall make the grant on the basis of the fair distribution analyses and point system determinations made herein, dismiss all competing applications, deny any petition to deny, and issue a concise statement of the reasons for denying such petition and disposing of all substantial issues raised by the petition.²³⁹

83. With the exception of issues that are novel or require Commission consideration as specified below, the staff shall act on the tentatively selected applications pursuant to delegated authority. We delegate to the staff authority to act on any routine matter that may be raised, including whether the applicant is eligible, as certified, for the points awarded herein, and whether the application complies with all relevant Commission rules and policies.²⁴⁰ The staff need not refer such matters to the full Commission 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 issues to the Commission where the exclusion or inclusion of challenged or claimed points could alter the outcome in the particular NCE group, or where a new or novel question or substantial and material question of fact otherwise exists.²⁴¹ In such cases, the staff would refer the mutually exclusive group to the Commission for resolution of the novel issue and/or the determination of a successor tentative selectee.

84. **Severance for Purposes of Petitions, Appeals and Finality.** We are including a provision in the ordering clauses herein that each decision involving a mutually exclusive group is to be considered distinct and separate for purposes of petitions to deny, petitions for reconsideration, review on the Commission's own motion, and appeals. The timing of any action disposing of a petition or appeal affecting a particular group will not delay the finality of our decision for purposes of administrative or judicial review under section 1.103(b) of our rules with respect to any other group.²⁴²

VIII. ORDERING CLAUSES

85. Accordingly, IT IS ORDERED, that each decision involving a mutually exclusive group in this *Memorandum Opinion and Order* shall be deemed a distinct and separate decision for purposes of petitions to deny, subsequent petitions for reconsideration and reconsideration by the Commission or Bureau on its own motion, applications for review and review on the Commission's own motion, and

²³⁸ See *NCE Order on Reconsideration*, 35 FCC Rcd 10180, para. 13 ("A tentative selection is not final until the entire administrative process of resolving petitions to deny, and any subsequent pleadings, is complete"); 47 CFR § 1.106 (a)(1). See also *Patrick J. Vaughn, Esq.*, Letter, 22 FCC Rcd 11165 (MB 2007).

²³⁹ 47 U.S.C. § 309(d).

²⁴⁰ See, e.g., *Central Florida Educational Foundation, Inc.*, Letter, 23 FCC Rcd 1695 (MB 2008) (staff dismissal of defective application tentatively selected in a point hearing, and staff award of permit on a non-comparative basis to only remaining acceptable applicant).

²⁴¹ See generally *NCE Omnibus*, 22 FCC Rcd at 6162, n.230 (2007) ("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.").

²⁴² See 47 CFR § 1.103(b).

appeals.²⁴³ 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.

86. **NCE MX GROUP 59B.** Accordingly, IT IS ORDERED, That the Application filed by Georgia Public Telecommunications Commission (Application File No. 0000167018), is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Pelham, Georgia, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we intend, by public notice, TO DISMISS the mutually exclusive applications of Big Bend Heritage Music Association, Inc. (Application File No. 0000166291), Elijah Radio (Application File No. 0000167410), Faith and Action Community Outreach, Inc. (Application File No. 0000165985), Church Planters of America (Application File No. 0000167096), and Bemiss Road Baptist Church and Lowndes County Christian Academy Inc. (Application File No. 0000167233), and TO GRANT the application of Georgia Public Telecommunications Commission (Application File No. 0000167018), CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, 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.

87. **NCE MX GROUP 158.** Accordingly, IT IS ORDERED, that the Application filed by City of Hobbs, New Mexico (File No. 167470) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Hobbs, New Mexico, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of New Mexico Junior College (File No. 167689), New Hope Baptist Church – Hobbs (File No. 167507), Christian Ministries of the Valley, Inc. (File No. 166726), Eastern New Mexico University (File No. 166693), Christian Television Radio Ministry (File No. 167642), Teleamerica Communications West Palm Beach Corp. (File No. 167808), and Hispanic American Christian Network, Inc. (File No. 167156), and TO GRANT the application of City of Hobbs, New Mexico (File No. 167470) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, 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.

88. **NCE MX GROUP 196.** Accordingly, IT IS ORDERED, that the Application filed by Texas Public Radio (File No. 166683) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Gonzales, Texas, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to

²⁴³ See 5 U.S.C. §§ 702, 704, 706; 47 U.S.C. §§ 309(d), 402(b), 405; 47 CFR §§ 1.106-08, 1.113, 1.115, 1.117 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).

deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Centro Cristiano de Vida Eterna San Antonio (File No. 167130) and TO GRANT the application of Texas Public Radio (File No. 166683) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and PROVIDED THAT, Texas Public Radio must surrender or otherwise divest itself of its licenses for KCTI(AM), Gonzales, Texas, and FM translator station K233CZ, Gonzales, Texas, prior to commencement of program tests of the full service NCE FM station.

89. **NCE MX GROUP 215.** Accordingly, IT IS ORDERED, that the Application filed by Crucian Educational Non Profit Group Inc. (Application File No. 0000166670) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Charlotte Amalie, Virgin Islands, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Evangelical Megaphone Ministries, Inc. (Application File No. 0000166255), and TO GRANT the application of Crucian Educational Non Profit Group Inc. (Application File No. 0000166670) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

90. **NCE MX GROUP 76.** Accordingly, IT IS ORDERED, that the Petition to Deny, filed on November 21, 2022, by Sound in Spirit Broadcasting, Inc. (Pleading File No. 0000203828), IS GRANTED. IT IS FURTHER ORDERED, that the tentative selection of the application of Heritage Baptist Church (Application File No. 0000167422) for a construction permit for a NCE FM station in Burlington, Iowa, IS RESCINDED. IT IS FURTHER ORDERED, that the Application filed by Sound in Spirit Broadcasting, Inc. (File No. 0000166214), is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Burlington, Iowa, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we intend, by public notice, TO DISMISS the mutually exclusive application of Heritage Baptist Church (Application File No. 0000167422) and TO GRANT the application of Sound in Spirit Broadcasting, Inc. (Application File No. 0000166214) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

91. **NCE MX GROUP 104.** Accordingly, IT IS ORDERED, that the Informal Objection, filed on January 23, 2023, by Johnson County Board of Education (Pleading File No. 0000207579), IS GRANTED. IT IS FURTHER ORDERED that the Informal Objection, filed on February 14, 2023, by John Jason Bennett (Pleading File No. 0000210720), IS DISMISSED AS MOOT. IT IS FURTHER ORDERED, that the tentative selection of the application of Paintsville Church of Christ (Application File No. 0000165543) for a construction permit for a NCE FM station in Paintsville, Kentucky IS

RESCINDED, and the application is DISMISSED. IT IS FURTHER ORDERED, that the Application filed by Johnson County Board of Education (Application File No. 0000166282) IS GRANTED CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

92. **NCE MX GROUP 106.** Accordingly, IT IS ORDERED, that the Petition to Deny, filed on January 25, 2023, by Horizon Christian Fellowship (Pleading File No. 0000207900), IS GRANTED IN PART. IT IS FURTHER ORDERED that the Petition to Deny, filed on January 30, 2023, by Rhode Island Public Radio d/b/a The Public's Radio (Pleading File No. 0000208696), IS DISMISSED AS MOOT. IT IS FURTHER ORDERED, that the tentative selection of the application of Radio Sharon Foundation (Application File No. 0000167597) for a construction permit for a NCE FM station in Narragansett Pier, Rhode Island, IS RESCINDED. IT IS FURTHER ORDERED, that the Application filed by Horizon Christian Fellowship (Application File No. 0000167259), is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Narragansett Pier, Rhode Island, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we intend, by public notice, TO DISMISS the mutually exclusive application of Radio Sharon Foundation (Application File No. 0000167597) and TO GRANT the application of Horizon Christian Fellowship (Application File No. 0000167259) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions. IT IS FURTHER ORDERED that the Media Bureau, in connection with the RSF Application and RSF's pending assignment application to acquire an FM translator station in Monticello, New York, Application File No. 0000211357 (filed Feb. 24, 2023), shall investigate RSF's use of incorrect addresses in the RSF Application, whether RSF violated section 1.17 of the rules, whether RSF engaged in misrepresentation or lack of candor, and whether RSF has the requisite character to be a Commission licensee.

93. **NCE MX GROUP 114.** Accordingly, IT IS ORDERED, that the Informal Objection, filed on August 16, 2022, by Albert Adam David (Pleading File No. 0000197765), IS GRANTED. IT IS FURTHER ORDERED that the Petition to Deny, filed on September 1, 2022, by Full Potential (Pleading File No. 0000199130), IS GRANTED IN PART and DENIED IN PART. IT IS FURTHER ORDERED, that the tentative selection of the application of Evangelistic Knights of Our Lady, Inc. (Application File No. 0000167505) for a construction permit for a NCE FM station in Escanaba, Michigan, IS RESCINDED. IT IS FURTHER ORDERED, that the Application filed by Full Potential (Application File No. 0000167777) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Wells, Michigan, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we intend, by public notice, TO DISMISS the mutually exclusive application of Evangelistic Knights of Our Lady, Inc. (Application File No. 0000167505) and TO GRANT the application of Full Potential (Application File No. 0000167777) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

94. **NCE MX GROUP 122.** Accordingly, IT IS ORDERED, that the Petition to Deny, filed on November 22, 2022, by Bible Broadcasting Network, Inc. (Pleading File No. 0000204160), IS GRANTED. IT IS FURTHER ORDERED, that the tentative selection of the application of Grand Forks Bible Study Group (File No. 0000167114) for a construction permit for a NCE FM station in Grand Forks, North Dakota, IS RESCINDED. IT IS FURTHER ORDERED, that the Application filed by Bible Broadcasting Network, Inc. (Application File No. 0000167299), is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Grand Forks, North Dakota, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we intend, by public notice, TO DISMISS the mutually exclusive application of Grand Forks Bible Study Group (Application File No. 0000167114) and TO GRANT the application of Bible Broadcasting Network, Inc. (Application File No. 0000167299) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

95. **NCE MX GROUP 59A.** Accordingly, IT IS ORDERED, that the Informal Objection, filed on August 29, 2022, by Central Baptist Church of Ocala, Inc. (Pleading File No. 0000198584), IS GRANTED. IT IS FURTHER ORDERED, that the tentative selection of the application of Elijah Radio (Application File No. 0000167035) for a construction permit for a NCE FM station in Live Oak, Florida, IS RESCINDED. IT IS FURTHER ORDERED, that the Application filed by Central Baptist Church of Ocala, Inc. (Application File No. 0000166339), is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in West Lake, Florida, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we intend, by public notice, TO DISMISS the mutually exclusive applications of Florida Educational Radio, Inc. (Application File No. 0000167677), Learning Avenue, Inc. (Application File No. 0000167472), DND Ministries (Application File No. 0000167338), Big Bend Heritage Music Association, Inc. (Application File Nos. 0000166293 and 0000166684), and Elijah Radio (Application File No. 0000167035) and TO GRANT the application of Central Baptist Church of Ocala, Inc. (Application File No. 0000166339) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, 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.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary