

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	GC Docket No. 92-52
	)	
Reexamination of the Policy	)	
Statement on Comparative	)	
Broadcast Hearings	)	
	)	RM-7739
	)	RM-7740
	)	RM-7741

To: The Commission

**COMMENTS**

Carol Cutting, pursuant to Section 1.415 of the Commission's Rules, hereby submits her Comments in response to the Notice of Proposed Rulemaking, FCC 92-98, released April 10, 1992 ("Notice"), in the above-referenced proceeding.

**Introduction**

I am the President and sole voting stockholder of Cutter Broadcasting, Inc. ("Cutter"), permittee of Radio Station WEIB(FM), Northampton, Massachusetts. Cutter acquired the construction permit for Radio Station WEIB after a protracted comparative hearing proceeding which began in 1986 (two years after the applications were filed) and continued until 1991. See Northampton Media Associates, 3 FCC Rcd 570 (1988). During those efforts to acquire the Northampton construction permit, I gained first-hand experience of several aspects of the Commission's comparative broadcast hearing process. Based on this

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experience and my being an African-American female, I am able to provide the Commission with a somewhat unique perspective regarding the shortcomings of its present comparative hearing process and the potential pitfalls of its proposed point system.

Due to the small number of minority and female broadcasters in the current radio marketplace, I believe the Commission should be very reluctant to take any actions which could conceivably result in the creation of additional barriers to the entry of minorities and females in the broadcast industry. Therefore, I become concerned when the Commission considers altering those mechanisms which facilitate minority and female entry into the industry -- namely, the comparative hearing process through its award of minority and female preferences. This concern is shared by the United States Congress, which includes a prohibition against a change in the Commission's policies regarding minority and female ownership when it allocates funds to the Commission. See Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1992, Pub. L. No. 102-140, 105 Stat. 782, 797 (1991). If anything, I think the Commission should be examining additional methods for encouraging involvement of underrepresented groups in broadcast ownership.

As a survivor of the Northampton proceeding, I can appreciate the Commission's efforts to streamline the

comparative hearing process. However, I cannot wholeheartedly support all of the Commission's proposals in the Notice because I fear that some of the Commission's proposals -- in particular, the "finder's preference" and the tie-breaker mechanisms -- would have an adverse impact on the ability of minorities and females to become broadcast licensees. Moreover, I am concerned that efforts to streamline the process may lead to abuses of the process, as has been the case with services where a lottery system is used.

#### **Finder's Preference**

In its Notice, the Commission proposed a "finder's preference" by which applicants who "successfully request the allotment of new broadcast frequencies through rulemaking" would receive a comparative preference. The basis for such a preference is to "recogniz[e] that such finders have taken the initiative in and undertaken the burden of introducing a new service to the community." Along these lines, the Notice likens the rationale for the "finder's preference" to that of the "pioneer's preference" which is awarded in connection with the development of new communications services and technologies. Id. I oppose the Commission's adoption of a "finder's preference" for the following three reasons.

First, the proposed "finder's preference" is significantly different from the "pioneer's preference."

The pioneer's preference is aimed at encouraging innovation of new communications services. Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services, 6 FCC Rcd 3488, 3489 (1991).

In considering the pioneer's preference, the Commission noted that development of new communications services requires a significant amount of time and money. Id. From the comments submitted in the proceeding, the Commission determined that parties were hesitant to undertake such efforts if there were no means by which they could recoup their investments. Id. The Commission decided that the assurance of a license would be a sufficient incentive for continued innovation by allowing the innovating party to recoup its investment.

By contrast, the petitioner for a new allotment usually incurs engineering and legal fees associated with the preparation and prosecution of its petition and expends a minimal amount of time regarding the petition or its preparation. Such petitions usually do not require ingenuity or creativity from the petitioning party. In fact, the process by which a party prepares a petition for a new allotment is a fairly routine matter. Consequently, the petitioning party's limited expenditures, coupled with the routine nature of such petitions, does not provide a compelling need for a preference as was demonstrated in the pioneer's preference context. There has not been any

shortage of allotment requests under the current system.

(In fact, many broadcasters would argue that there have been too many allotments, leading ultimately to a diminution of public service programming.)

Second, the proposed "finder's preference" appears to be a giveaway for the first party to successfully request a new allotment through rulemaking. Unlike the other factors evaluated in the comparative hearing process, the "finder's preference" does not provide any public service benefit. The proponents of the preference attempt to demonstrate its public service component by stating that it will assist minorities, women and other newcomers in obtaining licenses. Id. However, the "finder's preference" will not be available to these groups exclusively but to all parties who petition for new allotments. Although the proponents point to a few isolated incidents where such a preference would have assisted a minority applicant, there is no suggestion that the bulk of such petitions are filed by minority, female or first-time applicants. Consequently, if this is the sole public service benefit of the "finder's preference," it appears to be quite minimal.

Third, I am concerned that the "finder's preference" would dilute or counteract the preferences awarded for minority and female ownership. One can easily envision a scenario in which an applicant, based on its "finder's preference," prevails over a minority- or female-controlled

applicant. Since the "finder's preference" is devoid of any significant public interest benefits, such a result would be against the public interest.

#### **Tie-Breaker Mechanisms**

In the Notice, the Commission proposed three alternative tie-breaker mechanisms. As indicated below, I oppose all of the proposed tie-breaker mechanisms. At the outset, I would like to point out that the Commission currently has a tie breaker mechanism which, although adopted several years ago, has not been used.

The first proposal -- to grant the application of the applicant first filing for the facility in question -- suffers from the same shortcomings outlined above regarding the finder's preference. If anything, this tie-breaker mechanism is more troubling because it will be the determinative factor in selecting the prevailing applicant, but it offers absolutely no public interest benefit.

The second proposal -- to use substantial broadcast experience -- would put minorities and females at a disadvantage. The primary reason for awarding comparative preferences to minorities is so that they will contribute to the diversity of programming. It would not be necessary for the Commission to encourage diversity if it were already present. Under this proposal, therefore, more often than not, a minority applicant involved in a tie-breaker would lose. Similarly, the degree of female representation in

the industry is low and, therefore, it is not likely that a female applicant would prevail when presented with this tie-breaker mechanism.

The third proposal -- to choose the winning applicant randomly -- is objectionable because its result is not linked to the furtherance of the public interest or the provision of any public service benefits.

In sum, any tie-breaker mechanism adopted by the Commission, unlike the three proposed mechanisms, should be based on a public service benefit and should not disadvantage minorities or females once the past, present and future trends of the broadcast industry are considered.

#### **Point-System of Preferences**

The Notice also proposes the adoption of a point-system of preferences rather than the system of preferences currently used in the Commission's comparative hearing process. Here again, unfortunately, I am unable to support this change.

First, the point-system proposal is untimely in light of the Commission's fairly recent reforms to its comparative hearing process. In 1990, the Commission adopted reforms to the comparative hearing process with the specific purpose of expediting the resolution of cases. See Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 197 (1990), clarified 6 FCC Rcd 3403 (1991). These reforms, which also were adopted

through a rulemaking proceeding, have been in place for less than two years. Consequently, it is too early to determine whether they have resolved some of the shortcomings of the comparative hearing process. Before further modifying the process, it is suggested that the Commission first assess what impact, if any, its 1990 reforms have had on the process. At this point, the Commission has not had a sufficient amount of time to make an informed assessment of its reforms.

Second, the proposed point-system is not significantly different from the Commission's present comparative hearing process. The most significant issue here is whether to retain the integration factor, and I support its retention. Apart from that, the main difference between the two systems seems to be the label used for the preferences. The choice between the use of a range of numbers and a scale of adjectives is not a sufficiently significant reason for revamping the system, especially when it has not been demonstrated that the proposed point-system will improve the comparative hearing process.

#### **Female Ownership**

In its Notice, the Commission requested input regarding any other comparative factors. In light of the recent decision of the District of Columbia Court of Appeals regarding the Commission's awarding of female preferences, I

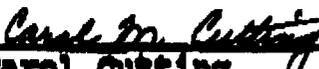
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propose that the Commission revisit the topic of female preferences in comparative hearings. The Commission should reexamine this topic to determine whether such preferences can be awarded in a manner which does not violate the principles underlying the Court's decision. See Lamprecht v. FCC, No. 88-1395 (D.C. Cir. February 19, 1992).

Conclusion

Although I support the Commission's general efforts to streamline its comparative hearing process, for the reasons given above, I cannot fully support the proposals given in the Notice. I specifically urge the Commission to consider and review thoroughly the impact that any changes in its comparative hearing process will have on the ability of minorities and females to acquire broadcast licenses.

Respectfully submitted,

  
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June 2, 1992