

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Reexamination of the Comparative)	MB Docket No. 19-3
Standards and Procedures for Licensing)	
Noncommercial Educational Broadcast)	
Stations and Low Power FM Stations)	

To: Secretary, Federal Communications Commission
Attention: The Commission

**JOINT REPLY COMMENTS
OF NCE TELEVISION AND RADIO LICENSEES**

The group of fifty-four (54) noncommercial educational television and radio station licensees shown below (collectively, “NCE Licensees”), by their attorneys, submit these joint reply comments responsive to the *Notice of Proposed Rulemaking* in the referenced proceeding (“NPRM”)¹. The NPRM proposes changes to the Commission’s rules and procedures for comparatively considering competing applications for new and major modifications to noncommercial educational (“NCE”) broadcast stations and low power FM (“LPM”) stations to “improve selection procedures, expedite the initiation of new service to the public, and eliminate unnecessary applicant burdens.”²

¹ *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, Notice of Proposed Rulemaking, MB Docket No. 19-3, FCC 19-9 (rel. February 15, 2019).

² *Id.* at 2.

The NCE Licensees are universities and university systems, state educational communications authorities, boards and commissions, community and technical college districts, and non-profit community-based public media enterprises. Collectively, they are licensees of hundreds of full power noncommercial educational television and radio stations, and numerous television and FM translator stations and related facilities, over which they provide an incredible array of services to their local communities. It is highly likely that at least certain of the NCE Licensees in the future will be applicants for new NCE station licenses. The NCE Licensees thus have a strong interest in the issues raised by the NPRM.

The Public Broadcasting community, represented by America's Public Television Stations, Corporation for Public Broadcasting, National Public Radio, Inc., and Public Broadcasting Service, filed comments in response to the NPRM³ supporting proposed changes to the NCE comparative selection process as reflected in Section III of the NPRM, and expressing agreement with the overall direction of Section V of the NPRM. However, Public Broadcasting questioned the NPRM's rationale for defining what constitutes a major or minor amendment to a pending NCE application resulting from changes in the membership of an NCE applicant's governing board.

The NCE Licensees strongly endorse the positions reflected in the Public Broadcasting Comments. Those comments focus on the Commission's goal, reflected in the NPRM, to reduce the circumstances in which NCE station applicants may have their applications dismissed due to "major amendments" caused by changes in the membership of an applicant's governing board. However, Public Broadcasting expresses concern that

³ Comments of America's Public Television Stations, Corporation for Public Broadcasting, National Public Radio, Inc., and Public Broadcasting Service in MB Docket No. 19-3 (filed May 20, 2019) ("Public Broadcasting Comments").

the NPRM -- by its use of “ownership” phraseology and in its substantive proposals -- veers off course by ignoring the reality that NCE board members are not owners and therefore should not be treated as such.⁴ The NCE Licensees agree.

Under Sections 73.503(a) and 73.621(a) of the Commission’s rules, all NCE station applicants and licensees must be “nonprofit educational organizations.” As noted above, the NCE Licensees include governmental agencies, educational institutions and private non-stock entities that exist to serve educational and public service purposes.

For governmental (public) entities, despite the NPRM’s implication that such entities are owned by their governing board members,⁵ the notion that a government agency or public university is owned by its governing board is, as stated by the Public Broadcasting Comments, conceptually misguided. The NCE Licensees agree with Public Broadcasting that, to the extent one can suggest that governmental entities are owned by anyone, ownership can only be perceived as lodging in the citizens of the jurisdiction of the governmental entity.⁶

Private non-profit, non-stock entities are also not owned by their board members, or any other individuals. These entities do not issue stock. They do not have stockholders or investors. No persons have a right to any share of their revenue, net income or assets. They thus have no individual “owners” under any reasonable understanding of that concept.

In addition, the roles and motivations of board members of public or private nonprofit entities are not the same as those of owners of for-profit corporations operating

⁴ Public Broadcasting Comments, at 3.

⁵ The NPRM proposes that the FCC would “treat all ownership changes” at governmental applicants as minor, provided that the change has little or no effect on an applicant’s mission. NPRM at 28 (¶67) (emphasis added).

⁶ Public Broadcasting Comments, at 4.

commercial broadcasting stations. NCE board members do not seek to obtain any financial return to themselves. They are (1) unpaid volunteers who support (often with donations of their time and money) the educational and public service of the NCE station(s) in their community; (2) unpaid volunteers who serve on the board of an educational institution to which a station is licensed, or (3) elected or appointed governmental officials who serve on licensee governing boards, often by virtue of their holding other positions in state or local government (such as governor, superintendent of public instruction, member of the state legislature, school board member, or member of a governmental commission). Clearly, as the Public Broadcasting Comments urge, NCE board members are not owners of broadcast applicants or licensees, and board membership changes should not be treated as ownership changes.

The Public Broadcasting Comments show that improperly conflating nonprofit board membership with ownership leads to the misplaced notion that a change of over 50% of the membership of an NCE governing board might, in and of itself, constitute a transfer of control.⁷ Despite suggestions in the NPRM to the contrary, the Commission has never adopted a rule or policy stating that changes in the majority of the membership of an NCE station's governing board constitutes a transfer of control. Nor has the Commission ever determined that if a turn-over of 50% of a board's membership is a transfer of control, such transfers are properly classified as "major" or "minor" based on their timing.⁸ The Commission should not do so now.

The Public Broadcasting Comments also object to the notion that a discredited and ultimately dismissed 30-year old Notice of Inquiry on NCE transfers of control⁹

⁷ Public Broadcasting Comments at 5-6.

⁸ *Id.*, at 7.

⁹ *Transfers of Control of Certain Non-Stock Entities*, Notice of Inquiry, 4 FCC Rcd 3403 (1989).

provides any legal precedent or even persuasive support for the notion that changes in the membership of station boards constitute transfers of control, or that such transfer should be classified as major or minor based on their timing. Again, the NCE Licensees agree.

Conclusion.

The NCE Licensees urge that changes in NCE station or applicant board membership, regardless of the timing of such changes, should not be considered “major” ownership changes in the context of NCE comparative proceedings.

Respectfully submitted,

ALASKA PUBLIC TELECOMMUNICATIONS,
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