

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

In the Matter of)	
Notice of Proposed Rulemaking)	
Reexamination of the Comparative)	MB Docket 19-3
Standards and Procedures for)	
Licensing Noncommercial Educational)	
Broadcast Stations and)	
Low Power FM Stations)	

6/18/2019

Reply Comments of Albert Davis

General comments on other submissions

In general, we mostly agree with the filing by Jeff Sibert and the reply comment filing by Center For International Media Action.

We mostly disagree with the filing by REC Networks, because it hurts localism and diversity.

We disagree with any cap on the number of participants that can aggregate points, or any policy to break ties based on attributes that inherently favor factors the applicants are stuck with, such as founding date.

We strongly agree with the point raised by America's Public Television and reply comments by NCE Licensees (public radio) regarding that holding a non-commercial license is not ownership, and thank them for bring it up and stating it clearly. Unfortunately some of the large chain broadcasters claiming to be non-commercial clearly think of it as ownership and act accordingly. This undermines the difference between commercial and non-commercial licenses.

PROPOSED CHANGES TO THE NCE COMPARATIVE PROCESS

In our own filing, we said we favor a change of the full power NCE procedure to be like the LPFM procedure.

In support of that, we list here some of the tactics that were used that hurt localism, and served mainly to put more channels in the control of a few networks.

The first is the 307(b) first and second coverage. Some applicants went very far to maximize claimed coverage, to win on this stage, and to get the extra point for a superior technical showing, meaning most coverage.

One of them was filing ridiculous antenna patterns. The rules specify a limit of 2 db/10 degrees where protection of an existing station is a factor, but the interpretation is inconsistent. Most engineers were conservative in the sense of applying the limit to the entire slope. This makes sense from several perspectives. First, it maps better to real antennas. Second, they were advised by FCC staff to do so to avoid risk of dismissal. There were a few engineers who specified with what appeared to be square corners, on every application they made. Most of them were initially dismissed, but then refiled with the only difference being to pull back on the steep slope, just 10 degrees away from the protection zone, keeping the square corners. These were allowed, and those doing it were rewarded handsomely for the antics.

We suggest as a rule change that the 2db/10 degree limit should apply to the entire slope of the filed pattern, not just the first 10 degrees of it, and that any application in flagrant violation should not be allowed to amend, or at least any preference that could have been gained by it should be lost, meaning lost entirely, not just reduced to the “corrected” filing. There needs to be a penalty for intentionally crossing the rules, like the LPFM policy that requires dismissal without opportunity to amend when spacing rules are violated.

Another is similar to the claimed “point stacking” of the LPFMs. In this case, banking on the policy that one winner will be selected, and that a full settlement can do anything, including bringing in others that would otherwise lose, and freeing the licensee from any preserve-the-points restrictions, the “winner” contacts other applicants with a message essentially stating “we will win, you will lose, we will pay you to withdraw. At the same time, another would-be loser that is friendly to the winner mods to singleton and is granted a construction permit. There is almost no negotiation here. The “winner” is in full control. The only negotiation possible is that a “loser” can refuse the payment.

In summary, the NCE (“full power”) comparative process really needs a total overhaul, not just a few patches. Copying the LPFM process would be a good start.

PROPOSED CHANGES TO THE LPFM COMPARATIVE PROCESS

We disagree with any cap on the number of participants that can aggregate points, or any policy to break ties based on attributes that inherently favor factors the applicants are stuck with, such as founding date.

REC comments indicate that pooling too many is abuse, that it should be limited to 3, and if there is still competition the oldest organizations should prevail. Also, that all should be required to do a minimum number of hours, in certain parts of the day, and not share facilities.

We disagree with all of this.

Several organizations did significant outreach to try to get local organizations to apply. In some areas they were very successful, with more organizations than channels available. In some cases, applicants chose to disburse over several channels, to not compete with each other. In others, they chose to stack

on one channel, with intent to share. This is legal and good, especially considering that some of them will not be successful. In some cases, the applicants knew each other, and knew about the other applications. In some cases they did not, until after the applications were all in.

Allowing as many as possible to participate is a good idea. It encourages them to work together and build community, in a positive way.

Allowing them to share facilities is a good idea. Many of these organizations have tight budgets, so buying all of the equipment is a lot of money. Also, if they share facilities they share the same coverage, making it possible to split and fit more simultaneous stations in.

Some of them by their nature would only produce a few hours of original programming, so they could easily be satisfied with a small number of hours. This works financially if they are allowed to share facilities.

The non-profits of a region probably do know each other, and likely encouraged each other to apply. This is good.

There can be real diversity with this kind of sharing. For example, a news organization, a neighborhood association, an arts group, an activist group, an ethnic group, all have distinct programming goals that could work together well for a truly diverse whole. Distributing it over several licensees improves the robustness of the arrangement.

There is nothing wrong with one taking hours that could be considered by others to be undesirable. Depending on the organization, those hours may be most desirable for them. An experimental art group may actually prefer midnight to 3 AM. A labor oriented group with programming for any by hotel or restaurant workers may prefer the hours before everyone else gets up in the morning, such as 3-6 AM. Only they can make that judgment. It is greatly beneficial if they have their own license, not subject to the whims of another organization that just carries them.

Regarding the numerics of adding up all of the points, and the relative value of yet one more, it really doesn't matter. Consider as it is, all of the points are added. Consider as an alternative, add one point for each. Suppose there are 5 applications included, the first yields 25 points, the second method yields 9 points. Suppose there are 4, the first yields 20, the second yields 8. Either way the winner is the same, so there is no need to change it from what it is.

It doesn't always work well. I am aware of one case where an organization was led to believe they were being included, complete with all the papers, but were then left out of the final filing. Another example of abuse is to exploit a daisy chain to allow stations spaced far enough apart to separate to aggregate, shutting out applications in the middle, permitting both to go full time, and to move into the middle. The rules supposedly prohibit simultaneous operation, but that rule is ineffective because they can file shared time to get past the judgment, then next day file for full time operation. This is a case where this deception should be prohibited, and the station that was excluded should be allowed back in, or the shared time requirement should be permanent.

Respectfully submitted,

Albert Davis

June 28, 2019