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**Before The**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Reexamination of the Comparative Standards for Noncommercial Educational Applicants | ) | MM Docket No. 95-31 |

## COMMENTS OF DALE JACKSON

Dale Jackson, by her attorneys, hereby submits her comments in response to the Commission's Further Notice of Proposed Rule Making, FCC 98-269, released Oct. 21, 1998, in this proceeding.

### I. Summary

Mr. Jackson is a member of the board of a non-profit corporation that spent considerable time and money finding and proposing an available noncommercial educational FM allotment, and as a result, became the permittee of a noncommercial educational FM station at Jasper, Georgia. Mr. Jackson urges the Commission not to use lotteries to award noncommercial educational spectrum because lotteries encourage speculation and gaming of the system. Lotteries encourage national application mills to file numerous applications in markets. Lotteries do not encourage or reward bona fide local groups.

The "little guy," here the bona fide local groups that follow the Commission's rules and just want the opportunity to bring quality service to their local communities, will be discouraged and penalized by lotteries. All applicants are not equal from a public interest perspective, but lotteries treat sham applicants or big national applicants no differently from bona fide, small local applicants.

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The Commission's past experiences with abuses of its lotteries heightens these concerns. There were several instances of scandalous allegations of lottery skewing carried out by applicants in the Commission's cellular telephone lotteries. Those lotteries were apparently riddled with allegations of sham applicants, which allegations frustrated the Commission and delayed substantially the initiation of service to the public. That sorry episode should not be repeated in the noncommercial educational service, and yet the Commission's Further Notice does not cite, mention, or discuss the past lottery abuses, much less propose any steps to curb such abuses. It could be a big mistake to adopt lotteries in the face of that experience. Those abuses create a heavy, indeed insurmountable burden on any proponent of lotteries, and that burden has not been met in this proceeding.

Moreover, lotteries would not sufficiently reward bona fide applicants, such as Mr. Jackson's company, that go to the time and expense of finding and proposing allotments. There has to be a way for the Commission to reward and encourage finders of frequencies, and lotteries are certainly no way to reward or encourage finders. Nor is there a current deterrent to copycat application mills who copy the work of finders hoping for some reward other than a construction permit to initiate service in the local community.

Instead, Mr. Jackson proposes that the Commission adopt a point system and include within that system a significant and meaningful finder's preference, as well as lesser preferences for local diversity and national diversity and an even lesser preference for efficient use of spectrum. The test for any fair licensing system should be that those groups, such as Mr. Jackson's, that pay thousands of dollars and spend significant chunks of time locating a frequency for an allotment should get a substantial preference so that their efforts are encouraged

and rewarded.

In addition, to deter speculative applications which have the effect of delaying new service to the public, Mr. Jackson asks that the Commission adopt a firm financial commitment standard and scrutinize carefully the financial qualifications of applicants, through random audits and a requirement that the firm financial commitment (in available net liquid assets) be filed with the application. Such a requirement would allow the Commission to examine immediately any applicant's financial showing and ensure that petitions to deny can be filed in the event of a deficient firm financial commitment, which petitions could be ruled upon promptly. There is no public interest rationale for the Commission to spend its resources processing applications of entities who are not financially qualified, and it is very unfair to qualified applicants who are ready, willing, and able to construct and operate to be blocked by unqualified applicants.

A critical goal of any licensing system must be to expedite service to the public. See 47 U.S.C. § 157(a). Financially unqualified applications result in unconscionable delays in the application process and prevent the initiation of service to the public. These financially unqualified applications should not be countenanced.

In an auction system, there is no need, at least in theory, for financial qualifications requirements because financial qualifications are self-enforcing; the high bidder has to pay up to get its license. Even there, the Commission's experience with the PCS C Block auction shows that there is a serious potential for delay to the public whenever the Commission grants applicants without firm and definite evidentiary showings that the applicants are in fact financially qualified. With a point system or even more so with lotteries, the Commission must put in place safeguards to deter and ferret out financially unqualified applicants.

## II. Background

Dale Jackson is a member of the board of Community Public Radio, Inc. ("Community"). Community is a non-profit corporation. Community spent considerable time and money finding a frequency for a noncommercial educational FM station to be located in Jasper, Georgia. Community weathered the Commission's processes and is now the permittee of the Jasper station. Thus, these comments come from precisely the type of licensee that the Commission should want to encourage and reward: a bona fide group that did its homework and seeks to serve its community. Mr. Jackson respectfully submits that whatever licensing system the Commission adopts in this proceeding, such system should encourage and reward applicants such as Community to foster noncommercial educational service.

## III. The Commission Should Not Adopt Lotteries

The Commission should not use lotteries to award noncommercial educational licenses. The Commission's lottery proposal would make it more difficult for small, local operators like Mr. Jackson's company to win licenses. In a lottery, application mills and big national concerns could flood the Commission with boilerplate applications, and bona fide local applicants who follow the rules would not have a fair chance to win.

This scenario, which involves applicants trying to rig the lottery, is not imagined. Rather, it is exactly what the Commission found occurred in its cellular telephone lotteries. In two instances, the Commission designated multiple applications for hearings, although the proceeding were ultimately settled. See, e.g., Theodore M. Jones, 3 FCC Rcd 3555 (Comm. Car. Bur. 1988); Christina Communications, 2 FCC Rcd 1971 (Comm. Car. Bur. 1987). The integrity of the Commission's cellular lotteries was damaged by the very making of these allegations.

Service to the public was delayed. Expensive, time consuming litigation ensued. And, to this day, no one knows the full extent of the harm to the public. And, this experience is not limited to cellular. Similar problems were experienced in other services, such as MMDS.

The Commission cannot pretend that none of this occurred and adopt lotteries anew as if its lottery processes have been an acceptable model. It is true that the low power and IFTS lotteries have not led to reported cases of such abuses, but those services have inherent limitations. FM radio service, even educational or noncommercial service, is not so limited. The Further Notice does not cite, mention, or discuss the substantial problems experienced in the Commission's lotteries (including cellular and MMDS lotteries). This is a major omission, and on this basis alone, the Commission should not adopt lotteries.

Lotteries are also inappropriate because they do not reward or encourage finders. Bona fide groups who find frequencies for noncommercial allotments perform a very valuable function for the public. They literally create new service. There is no harm to the public from "unduly" rewarding finders. If adoption of a finder's preference results in a "land rush" of new allotments, that would only mean that there would be greater noncommercial educational service throughout the nation, a worthwhile result in and of itself. They should not be treated on the same footing as a national applicant who put a boilerplate application together in a few minutes and who has no knowledge of or commitment to the local community. On this basis, lotteries would be unfair and contrary to the public interest.

## IV. The Commission Should Adopt A Point System With the Highest Preference for Finders, Lesser Preferences for Local Diversity and National Diversity, and an Even Lesser Preference for Efficient Use of Spectrum

The Commission should adopt a point system along the lines it has proposed. But, the highest preference in that system should be for a finder's preference. That is the way to encourage and reward finders. Local diversity and national diversity should receive lesser, but still significant preferences. The Commission has long had the goal of ensuring diversity of ownership, and that goal encompasses both national diversity and local diversity. Finally, there should be an even lesser preference for efficient use of spectrum. That is a worthwhile goal, although not of the same magnitude as diversity or rewarding finders.

Accordingly, Mr. Jackson proposes the following system:

Finder's preference- 3 points

Local diversity- 2 points

National diversity- 2 points

Efficient use of spectrum- 1 point

This is a fair system that would further the public interest.

Mr. Jackson's system would include the following definitions. To win local diversity points, the applicant and its principals would have no current broadcast interests that have any overlap with the proposed new service. To win national diversity points, the applicant and its principals would have no other broadcast interests or promise to divest such interests prior to the initiation of program test authority. To win a point for efficient use of spectrum, the applicant would have to serve 10% or more of the area and population than the other applicants or a higher

class of service (B versus A, for example).

Mr. Jackson urges the Commission to make the definitions for purposes of implementing this system as clear as possible. In the event of a tie, the Commission should give the tied applicants the opportunity to reach agreement to share the frequency, merge, or find another allotment. Failing all else, the Commission could have a lottery between the tied applicants.

There is one last rule that the Commission could adopt that would reward and encourage finders. When a noncommercial educational applicant is the first to file for (i.e., discover) a non-reserved allocation, any additional (and by definition subsequent) applicants should have to be noncommercial entities in existence for at least one year before the filing date. Noncommercial finders should not have to compete with commercial entities or with noncommercial entities formed by or for commercial entities. This rule would truly give a reward to a noncommercial finder and would not impose any hardship on commercial entities, who presumably have far greater resources to find allotments than noncommercial entities, who depend on contributions for survival. In those instances in which a noncommercial applicant is not the finder for a nonreserved allotment but does apply, the noncommercial applicant should be allowed to settle without regard to any expense limitation, to enter into an agreement to share the frequency, or to compete under the point system.

## V. The Commission Should Require Firm Financial Commitments

Any history of the Commission's licensing system would have to show that when the Commission fails to adopt a firm financial commitment requirement and instead either relies on certifications, uses a reasonable assurance standard, or has no financial qualifications requirement, the public suffers. Without any requirement, there is no safeguard at all against

completely speculative applications, which are filed by applicants who have no idea of how to finance construction or operation and do not worry about it until it is time to file the first application to extend the construction permit. Nor is there any stopping national application mills who file prolifically with sufficient funds to construct stations in only a fraction of the markets in which they apply.

The public interest is disserved by such speculative applications, and real, honest applicants, like Mr. Jackson's company, are penalized. With a reasonable assurance standard or a mere certification requirement, the results have been no better. The Commission's decisions in cases in which false certifications were given or in which applicants claimed reasonable assurance without basis fill volume after volume in law libraries. In many cases, the wrongdoing has been intentional; in other cases, mistakes were made because applicants did not understand what the certification meant.

The only reliable financial standard is a firm financial commitment, that is a showing by the applicant in the application that it has sufficient net liquid assets on hand to build and operate the station. This standard sharply reduces the chances of any shenanigans by unqualified applicants. They either file a firm financial commitment that meets the Commission's requirements or not. This standard was used in the rural cellular lotteries, and apart from a controversy about whether it was adopted in conformity with the Paperwork Reduction Act, the standard worked relatively well in establishing a bright line test for applicants to meet. See 47 C.F.R. § 22.917. The Commission could conduct random audits to ensure that applicants were in fact meeting the standard, and in the event of any abuse, the petition to deny process could be relied upon.

The Commission must take serious measures such as those proposed here to preserve the integrity of its licensing processes and to promote fairness for bona fide applicants.

## VI. Conclusion

Wherefore, Dale Jackson respectfully requests that the Commission adopt the proposals advanced herein to reward and encourage bona fide noncommercial educational applicants.

Respectfully submitted,

By: _____

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