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February 26, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20024

Re: Reply Comments of New Mexico Commission on Public Broadcasting
Reexamination of the Comparative Standards for Noncommercial
Educational Applicants, MM Docket No. 95-31

Dear Ms. Salas:

On a courtesy to the New Mexico Commission on Public Broadcasting, we hereby transmit to you, an original and four copies of the New Mexico Commission on Public Broadcasting's reply comments in response to the Commission's *Further Notice of Proposed Rulemaking* in the above-captioned proceeding.

Respectfully submitted,


Margaret L. Miller

Enclosure

cc: Representative Heather Wilson (hand delivery)
Representative Joe Skeen (hand delivery)
Representative Tom Udall (hand delivery)
Senator Pete V. Domenici (hand delivery)
Senator Jeff Bingaman (hand delivery)

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NEW MEXICO COMMISSION
ON
PUBLIC BROADCASTING

1130 University Boulevard, NE

Albuquerque, New Mexico 87102-1798

RESOLUTION

Whereas, the New Mexico Commission on Public Broadcasting is charged with fostering and supporting the use of public non-commercial broadcasting to serve the people of New Mexico, and

Whereas, the state of New Mexico and many of its educational institutions have provided financial support for the development of a state wide non-commercial, educational broadcast service, and

Whereas, public radio and television programs address the local problems, interests and needs, and

Whereas, the Federal Communications Commission (FCC) currently is accepting comments on the Reexamination of the Comparative Standards of Non-commercial Educational Applicants, and

Whereas, this reexamination includes the consideration of rules on the use of non-reserved spectrum for non-commercial uses, and

Whereas, it also includes the consideration of rules on the selection process for choosing among mutually exclusive applications for non-commercial educational broadcasting licenses, and

Whereas, FM and TV translator stations provide important service to the more rural areas of the state, and

Whereas, these translator stations retransmit the programming of a primary station to areas in which direct reception is unsatisfactory due to distance or intervening terrain barriers, and

Whereas, the Congressional directive to the Corporation for Public Broadcasting placed emphasis on rural service, and

Whereas, it is appropriate to reexamine FCC rules and policies to ensure isolated rural communities do not lose access to translator delivered broadcast services, and

Whereas, FM and TV translator stations are secondary service to radio and television stations and, as such, a translator station must cease operation when a radio or television station is authorized and built using the same frequency as the translator, and

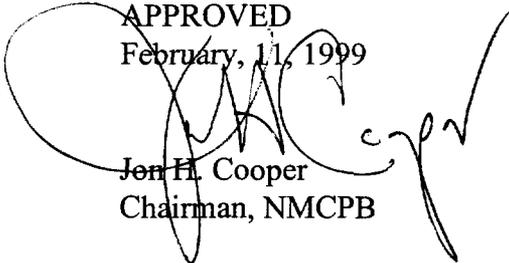


Whereas, it is of critical importance that the FCC resolve both of these issues in a way that allows non-commercial, educational broadcasters to be provided a fair and realistic opportunity to continue the use of non-reserved spectrum, and

Whereas, it is essential that the FCC set a selection process for competing non-commercial educational stations that recognizes the value of existing local service by locally owned and operated stations, now

Therefore, the New Mexico Commission on Public Broadcasting urges the Federal Communications Commission to reexamine the rules and policies for translator stations and also urges the use of a point system with meaningful criteria to decide mutually-exclusive applications for non-commercial educational broadcast stations, and does support and endorse the Joint Comments filed on behalf of Non-commercial Educational Broadcast Licensees by Dow, Lohnes & Albertson and the Joint Comments filed by America's Public Television Stations (APTS) and National Public Radio (NPR) on behalf of their member stations.

APPROVED
February 11, 1999


Jon H. Cooper
Chairman, NMCPB

fccres.doc/f

Please Stamp
and return

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: The Commission

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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THE ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS AND
THE CORPORATION FOR PUBLIC BROADCASTING**

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January 28, 1999

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

In the Matter of)
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Standards for Noncommercial)
Educational Applicants)

To: The Commission

**JOINT COMMENTS OF NATIONAL PUBLIC RADIO, INC.,
THE ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS AND
THE CORPORATION FOR PUBLIC BROADCASTING**

National Public Radio, Inc. ("NPR"), the Association of America's Public Television Stations ("APTS") and the Corporation for Public Broadcasting ("CPB") hereby submit their Joint Comments in response to the Further Notice of Proposed Rulemaking, released October 21, 1998, in the above-captioned proceeding (the "FNPRM").

NPR is a non-profit membership corporation that produces and distributes noncommercial educational programming through approximately 600 public radio stations nationwide. Among its award-winning programs are *All Things Considered*®, *Morning Edition*®, *Talk of the Nation*®, and *Performance Today*®. NPR also operates the Public Radio Satellite Interconnection System and provides representation and other services to its member station licensees.

APTS is a non-profit membership organization whose members comprise nearly all of the nation's 353 public television stations. APTS represents its membership on a national level by presenting the stations' views to the Commission, Congress, the Executive Branch and to other Federal agencies and policy makers.

CPB is the private, non-profit corporation authorized by the Public Broadcasting Act of 1967 to facilitate and promote a national system of public telecommunications. Pursuant to its authority, CPB has provided millions of dollars of grant monies for support and development of public broadcasting stations and programming.

INTRODUCTION AND SUMMARY

In the FNPRM, the Commission has sought further comment on its continuing effort to determine appropriate standards for choosing among mutually-exclusive applications for noncommercial educational ("NCE") broadcast licenses. The Commission also has sought comment on various alternatives for resolving competing applications between commercial and NCE entities for non-reserved frequencies, a process begun in the FCC's 1997 auction proceeding.

NPR, APTS and CPB submit these Joint Comments in support of the Commission's efforts to adopt a mechanism for resolving mutually-exclusive applications involving NCE applicants that advances the public interest. Since the Commission has made it clear that it no longer intends to use comparative hearings in any form, NPR, APTS and CPB urge the Commission to adopt a point system rather than a lottery as the mechanism for resolving mutually-exclusive applications among NCE broadcasters. The point system recommended by NPR, APTS and CPB offers an objective and streamlined method for selecting the applicant that will best serve the Commission's public interest goals of localism, diversity and spectrum efficiency. A lottery, on the other hand, will encourage speculation and otherwise disserve the public interest.

NPR, APTS and CPB believe that a point system that uses the following criteria for full-service broadcast stations, will best serve the Commission's public interest goals:

- a local headquarters credit (one point)
- a local directors and officers credit, where at least 75% of the directors and officers are local (one point)
- a local funding credit, where at least 50% of the expected funding is from local or public sources (one point)
- an established local educational presence credit (one point)
- a representativeness credit, for applicants with board members who are widely-representative of the local community (one point)
- a diversity of ownership credit, for applicants who own no more than 5 or 10 other radio stations or 5 or 10 other television stations (two points for 5 or fewer stations, one point for 10 or fewer stations)
- a fair distribution of service credit (two points for first NCE aural or video service in a community, one point for second NCE aural or video service in a community)
- a technical differences credit for materially greater technical proposals (up to two points)
- a credit for public funding or PTFP eligibility and application (one point)
- a facilities improvement credit (two points)

NPR, APTS and CPB suggest the use of a nearly identical point system to decide among mutually-exclusive applications for FM and TV translators. However, with FM translators the Commission should first compare only those applicants proposing a fill-in translator service or, if there are no such applicants, only those applicants proposing to replace a displaced translator in order to maintain an existing level of service. With TV translators, translators displaced due to the transition to digital television must be given priority.

In the event of a tie, NPR, APTS and CPB urge the Commission to award the license to the applicant with the fewest pending applications. If this still fails to break the tie, and the applicants cannot reach a settlement, then the Commission should use a random lottery amongst

the tied applicants to award the license. NPR, APTS and CPB also suggest a significant holding period to ensure that the point system results in a meaningful outcome for the public. Moreover, sufficient documentation should be filed in order to support claims for points or credits.

Where an NCE broadcaster is one of the mutually-exclusive applicants for a non-reserved frequency, the Commission should not resort to auctions to decide among the applicants. The Balanced Budget Act of 1997 exempts NCE broadcasters from auctions, regardless of whether the NCE applicant seeks a reserved or non-reserved frequency. In addition, subjecting NCE broadcasters to auctions would harm the public interest by effectively closing much of the broadcast spectrum to NCE entities, thereby limiting the diversity of voices and viewpoints available on the airwaves.

The Commission should not render NCE applicants ineligible for non-reserved spectrum in lieu of auctions. Such an action lacks any legal or policy basis. Moreover, it would abruptly halt the growth of public broadcasting and result in a downward spiral in the public's access to public broadcast services, in violation of congressional policy and the public interest.

Instead, the Commission should adopt the separate NCE processing track originally suggested by APTS. Once an NCE applicant files a technically-acceptable application for a non-reserved frequency, the channel should be deemed reserved for NCE use. At that time, only other NCE applicants would be permitted to file competing applications.

In the alternative, the Commission should adopt both of the following measures: (a) an expansion of the circumstances under which an NCE broadcaster can reserve additional spectrum for noncommercial use, and (b) a hybrid point system approach. Under a hybrid point system approach, the Commission should use a point system relevant to both NCE and commercial broadcasters to determine the most qualified applicant. If the NCE applicant is the most

qualified applicant under the point system, then it should receive the license. If a commercial applicant is the most qualified applicant under the point system, then the license can be awarded at auction.

DISCUSSION

I. History Of Participation In This Proceeding By NPR, APTS and CPB

Public broadcasters have participated actively in the Commission's NCE comparative standards and auction proceedings since their initiation. In response to a broad 1992 inquiry into changes to the commercial and noncommercial broadcast selection processes, APTS and NPR filed Joint Comments and Joint Reply Comments urging the Commission to maintain the existing NCE comparative hearing criteria, with several refinements to help ascertain the service that best meets community needs.¹ When the FCC separated the proceeding into two inquiries in 1995 – one for reserved licenses and one for non-reserved licenses -- APTS and NPR filed Joint Comments and, together with numerous NCE licensees, Joint Reply Comments.² In these filings, the parties proposed detailed comparative criteria for ascertaining the best-qualified NCE applicant.

While the proceeding examining comparative standards for NCE applicants remained pending, the Commission proposed auctions as a means of resolving all competing applications for non-reserved frequencies.³ APTS filed Comments, and NPR, CPB and the National

¹ See Joint Comments of APTS and NPR in GC Docket No. 92-52 (June 2, 1992); Joint Reply Comments of APTS and NPR in GC Docket No. 92-52 (June 30, 1992).

² See Joint Comments of APTS and NPR in MM Docket No. 95-31 (May 15, 1995); Joint Reply Comments of APTS, NPR and various NCE Licensees in MM Docket No. 95-31 (June 7, 1995).

³ See Competitive Bidding for Commercial Broadcast and ITFS Service Licenses, Notice of Proposed Rulemaking, 12 FCC Rcd 22363 (1997).

Federation of Community Broadcasters (“NFCB”) filed Joint Comments, opposing the use of auctions when an NCE applicant applies for a non-reserved frequency.⁴ NPR, CPB, APTS and NFCB also filed Joint Reply Comments.⁵ In these filings, the parties explained that subjecting NCE applicants to auctions would violate both the Balanced Budget Act of 1997 and public policy.

II. The Commission Should Adopt A Meaningful Point System To Resolve Mutually-Exclusive Applications For Reserved NCE Frequencies

In the Further Notice, the Commission considered three options for comparing applicants for NCE spectrum: (1) traditional comparative hearings; (2) lotteries; and (3) a point system. It tentatively rejected traditional comparative hearings and decided to select either a lottery or point system.⁶ In earlier stages of this proceeding, NPR and APTS supported streamlined comparative hearings to resolve competing NCE applications. However, in light of the Commission’s opposition to the comparative hearing process and its interest in adopting either a point system or lotteries to resolve competing NCE applications, NPR, APTS and CPB urge the Commission to adopt a point system. The point system recommended below will result in the selection of applicants that will best serve the public interest, without the substantial delays and costs frequently associated with the comparative hearing process.⁷

⁴ See Joint Comments of NPR, NFCB and CPB in MM Docket No. 97-234, GC Docket No. 92-52, GEN Docket No. 90-264 (January 26, 1998).

⁵ See Joint Reply Comments of NPR, NFCB, CPB and APTS in MM Docket No. 97-234, GC Docket No. 92-52, GEN Docket No. 90-264 (February 17, 1998).

⁶ See FNPRM at ¶¶ 7-28.

⁷ See In the Matter of Amendment of Part 74 of the Commission’s Rules and Regulations in Regard to Instructional Television Fixed Service, Second Report and Order, 50 Fed. Reg. 26,736 at ¶ 39 (June 28, 1985) [hereinafter the ITFS Order] (noting that a point system provides a

A. Lotteries Will Not Serve The Needs and Interests of The Public, Will Encourage Abuse And Speculation, And Should Be Rejected

The Commission should reject its proposal to use lotteries to decide among mutually-exclusive noncommercial educational broadcast applicants. Leaving these important licensing decisions to random chance would fail to serve the public interest. Lotteries would benefit lesser-qualified applicants and create opportunities for abuse and speculation. Moreover, the administrative efficiencies hoped for by the Commission would not be achieved.

The use of lotteries to decide among competing NCE applications will not assure that the winning applicant meets any public interest standards beyond the most basic qualifications. An applicant with no ties to a service area will have the same chance of winning a license as an applicant with significant ties to, understanding of and ability to address the needs of the service area. Even if the lotteries are weighted,⁸ a lucky applicant that receives none of the statutory lottery preferences could receive a license over an applicant that receives every lottery preference

meaningful comparison of applicants, “but with a less cumbersome and expensive procedure” than comparative hearings).

⁸ See FNPRM at ¶¶ 12-14. The two statutory lottery preferences for minority ownership and diversity of ownership fail to address adequately the qualifications required to provide the best noncommercial educational broadcast service. These preferences ignore the qualities of localism, representation of the diverse elements of the community, and fair distribution of NCE service that are so important to the establishment of a responsive public broadcast service. The minority ownership preference also suffers from Constitutional difficulties. See Adarand Constructors v. Pena, 515 U.S. 200 (1995). Furthermore, the diversification of ownership preference is harmful to the development of state-wide educational networks operating pursuant to state education plans. See FNPRM at ¶ 14. The station limits set out in the diversification of ownership preference also are so low that they penalize experienced public broadcasters who seek to extend their alternative service to an unserved or underserved community and are, in fact, the best qualified applicant. The inadequacy of these statutory preferences is reason enough to reject lotteries. Moreover, since any amount of adjustments to the lottery preferences will not guarantee that the best qualified applicant receives the license, the Commission should reject lotteries outright rather than trying to craft a more appropriate set of preferences.

and is thus deemed better qualified under the statutory standards. A grant of the license to the least qualified applicant hardly serves the “public interest, convenience, and necessity.”⁹

The use of lotteries to decide among mutually-exclusive NCE applicants also ignores Congressional policy regarding the distribution of NCE licenses. Congress has found that:

it furthers the general welfare to encourage public telecommunications services which will be responsive to the interests of people both in particular localities and throughout the United States, which will constitute an expression of diversity and excellence, and which will constitute a source of alternative telecommunications services for all the citizens of the Nation.¹⁰

Congress also has established a national universal service policy to make public telecommunications services available throughout the United States.¹¹ A system of lotteries will neither promote responsive, diverse NCE service of high quality nor assure the fair and universal distribution of NCE service. Thus, the Commission should heed the view of Senator Hollings (D-SC) in opposition to lotteries for NCE licenses: “I urge the FCC to develop appropriate criteria to assign these [public broadcast] licenses. The local communities deserve the right to have qualified public broadcast licensees. Public broadcasting is too important to leave to random chance.”¹²

While benefiting lesser-qualified candidates, lotteries will also increase the likelihood of speculation and abuse in the NCE application process. Lotteries will encourage applicants to file

⁹ 47 U.S.C. § 309(a).

¹⁰ 47 U.S.C. § 396(a)(5).

¹¹ See 47 U.S.C. § 396(a)(7) (“it is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States”).

¹² 143 Cong. Rec. S8396 (July 31, 1997).

as many applications as possible in order to increase their chances of receiving a license, instead of filing only those applications where they have identified a need for service and an ability to serve the needs and interests of the community.¹³ Lotteries also will encourage applicants to file applications that meet only a minimal level of acceptability. Applicants will have little incentive to ascertain the needs and interests of a proposed service area and to formulate a responsive programming service prior to filing, as many public broadcasters now do. Because of the lower costs of filing minimally-acceptable applications, NCE lotteries are likely to attract insincere applicants with intentions of selling the authorizations they receive through the lottery process.

For all the disadvantages of lotteries, there is no guarantee that lotteries will actually achieve administrative efficiencies. First, as the Commission has noted, the statutory weightings for lotteries face a high constitutional hurdle.¹⁴ The development of a sufficient record to support lotteries in the case of NCE applications could further delay, rather than expedite, the grant of NCE licenses. Second, speculation encouraged by lotteries would increase the number of filings before the Commission. The Commission would in turn need to examine each of these applications to ensure that they meet the basic qualifications.

The Commission has rejected lotteries in the past as a means of deciding among competing broadcast applications because of its concern “that any potential gains in efficiency that may be achieved by use of a lottery would be outweighed by the possible reduction in

¹³ If the Commission decides to adopt lotteries, it is essential that the Commission limit the number of lotteries in which applicants can participate within a given time period, as it has suggested. See FNPRM at ¶ 18. However, this measure would not completely discourage speculation, because applicants would still have an incentive to file as many applications as the limit permits.

¹⁴ See FNPRM at ¶ 12.

quality of broadcasting licensees and service to the public.”¹⁵ The Commission should again reject lotteries in the case of mutually-exclusive NCE applications for the same reasons.

B. The Point System Should Consist Of Meaningful Criteria That Reward The Applicant Who Best Serves The Public Interest Goals Of Localism, Diversity And Spectrum Efficiency

Contrary to a lottery, a point system grounded in meaningful criteria will result in the selection of the applicant that *best* serves the public interest. It will not encourage speculation, since applicants will be rewarded for proposals that demonstrate an ability to serve the public interest. Moreover, a point system can be administered in an efficient and expeditious manner.¹⁶

To be meaningful, the point system should award a license to the applicant that best serves the Commission’s public interest goals of localism, diversity and spectrum efficiency. Furthermore, the point system criteria must not be subject to easy manipulation. The point system recommended by NPR, APTS and CPB meets these requirements. On the other hand, we are concerned that the point system suggested by the Commission is incomplete and, without important modifications, could have unintended results.

¹⁵ In the Matter of Amendment of the Commission’s Rules to Allow The Selection from Among Competing Applicants for New AM, FM and Television Stations By Random Selection (Lottery), Order, 5 FCC Rcd 4002 (1990).

¹⁶ See ITFS Order, at ¶ 43 (“[T]he point system adopted in this Order will result in the expeditious processing of mutually-exclusive applications and the speed with which a lottery would result in a selection would not be significantly faster, if at all.”). The minor legislative adjustment that may be necessary to allow the Commission to delegate to staff the authority to examine applications under a point system should not be a significant hurdle. See FNPRM at n.22. The adjustment made to allow delegation of examinations under the ITFS point system involved the addition of just a few words and would serve as an appropriate model. See 47 U.S.C. § 155(c)(1); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

1. Localism Points

One of the primary goals of broadcast licensing policy is the promotion of localism.¹⁷ An applicant with substantial roots ties to the local community is in the best position to determine the diverse needs and interests of the service area and to provide programming and other services responsive to these diverse needs and interests, thereby serving two of the Commission's public interest goals. Accordingly, criteria focusing on an applicant's local ties should constitute a major component of any point system used to decide among competing NCE applicants.¹⁸

a. Local headquarters credit.

One point should be awarded to applicants that have local headquarters. Entities can only designate one headquarters, however, so as to avoid manipulation of the credit. An applicant located in the area to be served is in the best position to ascertain and address the diverse needs and interests of that area.¹⁹ The experience of public broadcasting demonstrates this fact. The majority of public broadcasters are local,²⁰ and they provide a significant amount of local

¹⁷ In the Matter of Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act, Notice of Proposed Rulemaking, CS Docket No. 98-201, 1998 FCC LEXIS 5874, 37 (1998); In the Matter of the Review of the Commission's Regulations Governing Television Broadcasting, 7 FCC Rcd 4111, 4115 (1992); 47 U.S.C. § 396(a)(5).

¹⁸ See, e.g., 47 C.F.R. § 74.913(b)(1) (awarding four points in the ITFS point system for local applicants).

¹⁹ See, e.g., ITFS Order at ¶ 16 (“[L]ocally based educational entities have been convincingly demonstrated by the commentors to be the best authorities for evaluating their educational needs and the needs of others they propose to serve in their communities.”).

²⁰ Public radio stations are licensed to the following predominantly local organizations: universities (362), non-profit community organizations (236), state governments (63), or local governments (33). Public television stations are licensed to the following predominantly local organizations: non-profit community organizations (136), state governments (123), universities (85) and local governments (8). See Corporation for Public Broadcasting, Frequently Asked Questions About Public Broadcasting (1997) (www.cpb.org/content/faq).

programming. Of the 633 public radio stations participating in a recent study, 100% air some local programming. On average, local programming constituted 50% of public radio stations' weekly broadcasts.²¹ In addition, 95% of all public television stations receiving CPB grants reported providing instructional service to schools during the 1995-1996 academic year, including 81% providing instructional programming to elementary schools and 79% providing instructional programming to secondary schools during that time period.²²

The Commission should define the term local, for this and the other localism credits described below, as follows: (a) located within 100 miles of the proposed facilities, or (b) located within the same state, or (c) if the proposed facilities are part of a "State-Wide Plan," located within the same state or a bordering community. A "State-Wide Plan" should be defined as an existing state-wide education plan of a state, municipality, state governmental agency, or public educational institution (i.e., a state university or public school system). To be considered local, the applicant and its parent entity or entities (including the ultimate parent) must also meet one of the above definitions of "local."²³

²¹ Public Radio Programming Study, Fiscal Year 1996, Research Note No. 105 (November 1997) (highlights at www.cpb.org), attached as Exhibit 1.

²² Elementary and Secondary Educational Services of Public Television Grantees: Highlights from the 1997 Station Activities Survey, Research Note No. 104 (November 1997), attached as Exhibit 2.

²³ A "Parent" of an applicant, in the noncommercial context, should be defined as an entity that selects or approves a majority of the directors and/or governing board members of the applicant or otherwise controls the applicant. Under the Intermountain Microwave standard, there are six indicia of control that guide an analysis of the actual control over an applicant. See Intermountain Microwave, 24 Rad. Reg. 983 (1963).

This definition of “local” is intended to reflect the actual ability of broadcasters to serve local needs and interests.²⁴ First, the 100-mile radius is important because the proximity of the applicant to the area to be served is likely to assure a noncommercial broadcast service responsive to the area of service. In addition, many existing public radio stations are often asked by outlying communities within 100 miles, which may or may not be in the same state, to establish a new full-service or translator station in their communities. These outlying communities often have interests that are shared with the applicant’s existing service area, but they are unable to receive the applicant’s existing signal because of distance or terrain.

Second, defining “local” to include the same state is important to include the many public broadcasters that are not owned by state or municipal governments, but that have established state or regional networks to address the needs and interests of their state residents. For example, the mission of Colorado Public Radio, a private, non-profit educational corporation, is “to create and distribute public radio programming for the people of Colorado.”²⁵ On its 5 full-service stations and 13 FM translator stations, it offers significant coverage of state politics, news and events throughout the state.²⁶ Often, these stations are the sole connection that some isolated communities have to the news and events of their state. A number of other public broadcasters

²⁴ The definition is broader than that used in the ITFS point system because of the differences in services, including broadcasting’s ability and obligation to cover a larger area than ITFS services.

²⁵ See Colorado Public Radio’s Mission Statement at www.cpr.org/about/index.htm.

²⁶ See www.cpr.org/about/index.htm (stating “Colorado Public Radio’s news effort focuses on three statewide news beats: education, government and the environment. Colorado Public Radio’s news hosts, three full-time reporters—two based in Denver, one in Grand Junction—and free-lance reporters based in Durango, Colorado Springs and elsewhere, provide stories from Denver to Grand Junction, from Pueblo to Steamboat Springs, from Lamar to Montrose and beyond.”)

licensed to private non-profit entities provide the same state-wide or regional services, such as Oregon Public Broadcasting, Minnesota Public Radio and St. Lawrence University's North Country Public Radio. Because of the ability of these networks to identify and serve the needs and interests of their state residents, Colorado Public Radio, Minnesota Public Radio, North Country Public Radio and other entities like them should be considered local throughout their states.

Third, the definition of "local" should include facilities operating under a State-Wide Plan because the state, state governmental agency or public educational institution with a State-Wide Plan is inherently local throughout its state.²⁷ Wherever the state's seat of government is located, it is obligated to serve the residents of that state wherever they may reside. State licensees will also possess significant connections to the communities in which they propose facilities and a unique ability to identify and serve the needs and interests of those communities. This unique ability is reflected in the extensive local programming of such state licensees as Maine Public Broadcasting, South Carolina Educational Radio Network, and Wisconsin Public Radio.²⁸ Defining state applicants as "local" also would encourage the development of state networks, which the Commission specifically supports.²⁹

In almost all cases, the proposed facilities of a state applicant will be located within the same state as the applicant; indeed, a state is unlikely to authorize the use of taxpayer money to

²⁷ For these reasons, in the ITFS point system, the FCC considered an entity to be local if created by a state or local government for the purpose of serving formal educational needs throughout the area over which the government's authority is intended to extend. See 47 C.F.R. § 74.932 n.1.

²⁸ Local program listings from these state television and radio networks are attached as Exhibit 3.

²⁹ See FNPRM at ¶ 14.

provide service in another state. However, there may be rare circumstances where a state may need to locate facilities in a community bordering its state in order to further its State-Wide Plan, to reach unserved residents in a particular area of its own state and to reach an unserved population with shared interests in bordering communities. If an application presents all of these circumstances, then the applicant should be considered “local” in the bordering community as well.³⁰

b. Local directors and officers credit.

The directors and officers of an applicant formulate and implement policies and decisions regarding service provided by a station. These policies and decisions are more likely to address the needs and interests of the service area if most of the directors and officers are “local.”³¹ Accordingly, the Commission should award one point to applicants (a) for which at least 75% of the officers and directors (or other members of the applicant’s governing body) are “local”, or (b) which are states, municipalities, state governmental agencies or public educational institutions. The directors and officers of a government-owned entity are inherently local within the entity’s geographic jurisdiction – again because a government is obligated to serve all of its residents wherever its authority extends.

³⁰ The Commission might consider withholding the local headquarters credit from the state applicant in a bordering community if its application is mutually exclusive with another applicant located within the same state as the proposed facilities.

³¹ Cf. 47 U.S.C. § 396(k)(8)(A) (requiring a licensee to make good faith efforts to establish a community advisory board “reasonably representative of the diverse needs and interests of the communities served by such station” in order to receive CPB funds).

c. Local funding credit.

The funding of station also reflects the station's responsiveness to the needs and interests of its community of license and service area. An applicant that receives the majority of its funding from the local area is more likely to be responsive to the needs and interests of that area than an applicant that is funded by an entity located across the country.³² Of course, there are some communities, particularly in rural areas of the country, that cannot afford to fund a much-needed station. These areas often look to CPB and/or public resources, such as state, municipal and/or PTFP funding, to supplement local funding. However, unlike funding from a distant private organization, such funding typically encourages local control.³³ Accordingly, the Commission should award one point to an applicant if at least fifty percent (50%) of the expected funding for the proposed facilities is from "local," CPB and/or public sources.³⁴

d. Local educational presence credit.

An established "local" educational organization should receive one point if it demonstrates that obtaining a license for the proposed facilities is important to achieving the organization's educational goals. Based on its experience in the community, the established "local" educational organization is in a better position than a newly-established organization to ascertain and address the needs and interests of the proposed service area. Moreover, the "local"

³² See Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees, 98 F.C.C.2d 746, 753-754 (1984) (noting that public broadcasters have a special duty to serve local needs and interests because a significant portion of the public broadcaster's budget is comprised of direct financial contributions from local audiences).

³³ See, e.g., 47 U.S.C. § 396(k)(8)(A); 15 C.F.R. § 2301.4(b) (description of PTFP priorities for local service); 15 C.F.R. § 2301.6 (requiring at least 25% local funding to receive a PTFP grant).

³⁴ In determining that a funding source is "local", a non-local entity must not be the guarantor or ultimate source of the funding.

educational organization may not be able to satisfy its educational goals outside of a small geographic area, while a distant educational organization may be able to satisfy its educational goals in many other locations.³⁵

The Commission should define an “educational organization” as an accredited educational institution, an educational or cultural organization owned by a non-profit corporation or a state, municipality, state governmental agency or public educational institution.³⁶ An organization must operate and provide educational or cultural services continuously for at least two years prior to filing an application to be considered “established.” The two-year benchmark will reward experience in a community and help prevent manipulation of the credit, without establishing too high a bar for newer entities with legitimate local educational goals.

e. Representativeness credit.

Lastly, the Commission should establish a representativeness credit, as it suggested.³⁷ However, this credit should apply to both radio and television. Radio stations, like television stations, are better able to address the diverse needs and interests of their service areas if their board members are widely representative of the local area. In addition, the credit should reward a baseline level of representation, rather than seek to differentiate among applicants whose leaders are more or less representative of the area. Otherwise, applicants would be encouraged to establish extremely large, unwieldy boards in order to beat out other applicants, and the

³⁵ See FNPRM at ¶ 24 & n.26.

³⁶ See 47 C.F.R. § 73.503.

³⁷ See FNPRM at ¶ 24.

Commission would be forced to make difficult judgment calls about which applicant is most representative of the community.

Accordingly, the Commission should award one point to applicants (a) with board members who are leaders (i.e., officers or directors) of at least five of the different "local" elements articulated in the "Community Leader Checklist,"³⁸ or (b) which is a state, municipality, state governmental agency, public educational institution or other accredited educational institution. To assure a broadly representative licensee, no individual board member should be credited with satisfying more than one "local" element. With respect to the second criteria, the board of stations licensed to governments and educational institutions, like the state or educational institution itself, is typically representative of and obligated to serve the interests of their constituent communities. Accordingly, it is appropriate to assume their broad representativeness.

³⁸ See *id.* at n.27. The traditional community elements are: (1) Agriculture; (2) Business; (3) Charities; (4) Civic, Neighborhood and Fraternal Organizations; (5) Consumer Services; (6) Culture; (7) Education; (8) Environment; (9) Government (local, county, state and federal); (10) Labor; (11) Military; (12) Minority and ethnic groups; (13) Organizations of and for the Elderly; (14) Organizations of and for Women; (15) Organizations of and for Youth (including children) and students; (16) Professions; (17) Public Safety, Health and Welfare; (18) Recreation; and (19) Religion. See In the Matter of Amendment of the Primers on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants and Noncommercial Educational Broadcast Applicants, Permittees and Licensees; 76 F.C.C.2d 401(1980); Ascertainment of Community Problems by Broadcast Applicants, 57 F.C.C.2d 418, 423 (1976). Some of these elements may not be practical for the recruitment of board members. For example, given many state lobbying laws and other governmental policies, it is often difficult to include a government leader on the board of a public broadcast station not licensed to a government entity. However, responsive applicants should be able to recruit five directors from among the 19 elements listed above.

f. These localism criteria do not raise potential difficulties under *Bechtel*.

The localism credits proposed by NPR, APTS and CPB, unlike the integration credit struck down in *Bechtel v. F.C.C.*, 10 F.3d 875 (D.C. Cir. 1993), do not raise potential difficulties. First, NPR, APTS and CPB propose a holding period that would require a winning applicant to maintain each of the factors for which it receives credit for an eight-year period. In *Bechtel*, the Court struck down the integration credit in important part because licensees who received authorizations as a result of an integration proposal had no obligation to remain integrated. 10 F.3d at 879. Second, there is substantial evidence that local licensees with significant ties to the community serve the diverse interests and needs of that community. Indeed, the *Bechtel* court recognized that “[f]amiliarity with a community seems much more likely than station visitors or correspondence to make one aware of community needs.” 10 F.3d at 885. Third, the localism points proposed by NPR, APTS and CPB do not include the “qualitative” nuances of the integration factor (such as number of hours spent in day-to-day management) that sometimes caused unintended and unreasonable results.

2. Diversity Points

Another primary objective of the Commission’s broadcast policy has been to maximize the diversity of ownership, points of view and programming available to the public.³⁹ Public broadcasters provide a critical contribution to the diversity of voices and programming available

³⁹ See, e.g. *Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rulemaking*, FCC 94-323 (Dec. 15, 1994) (citing core goal of “maximizing the diversity of points of view available to the public over the mass media”); *Newspaper/Radio Cross-Ownership Waiver Policy, Notice of Inquiry* 11 FCC Rcd 13003, 13005 n.5 (1996) (articulating the Commission’s primary concern with “diversity in ownership as a means of enhancing diversity in programming service to the public”).

to the public.⁴⁰ Therefore, the point system proposed by NPR, APTS and CPB includes credits for diversity. Specifically, NPR, APTS and CPB propose a structural diversity of ownership credit that will help achieve greater diversity of media ownership without penalizing local service or public broadcasting experience.

In earlier filings, APTS and NPR urged the Commission to give “comparative consideration and weight to noncommercial applicants that propose to increase the diversity of public broadcast programming.”⁴¹ NPR, APTS and CPB believe that increasing the diversity of NCE broadcast programming remains an important goal. However, it would be extremely difficult -- if not impossible -- for the Commission staff to decide, in the context of an objective point system, whether an applicant should be credited for proposing a programming service that is sufficiently diverse from existing services. In any event, the structural localism points described above, together with the diversity of ownership credit proposed in this section, will reward the applicant that is in the best position to identify and address the diverse needs and interests of a community, without forcing the Commission staff to make difficult judgment calls about an applicant’s proposed programming service.

⁴⁰ See 47 U.S.C. § 396(a)(5)-(6); Ascertainment of Community Problems by Noncommercial Educational Broadcast Applicants, 58 F.C.C.2d 526, 536 (1976) (finding that public broadcasters offer diverse programs that meet “cultural and informational interests often given minimal attention by commercial broadcasters”).

⁴¹ See Joint Comments of APTS and NPR in MM Docket No. 95-31 at 13-14 (May 15, 1995).

a. Diversity of ownership credits.

The Commission should award two points to applicants that (a) own five or fewer radio or five or fewer television stations, or (b) propose facilities that are part of a State-Wide Plan.⁴² The Commission should award one point to applicants that own ten or fewer radio or ten or fewer television stations. This point structure will promote diversity of ownership and assist new broadcast entrants. At the same time, it will not penalize applicants with some experience in providing NCE service. Facilities that are part of a State-Wide Plan should receive two points because state licensees have a special interest in and responsibility for serving the diverse needs and interests of their jurisdictions.

b. No credits for “local diversity”.

The Commission should reject its proposal for a “local diversity” credit, because it would, in fact, *harm* the public interest objectives of localism and diversity. The Commission proposes to award two points to an applicant if the principal community contour of the proposed NCE station does not overlap the principal community contour of any commonly controlled broadcast station.⁴³ This local diversity credit would favor an applicant based 2,000 miles away from the community of license that owns hundreds of stations nationwide and knows little about the community over a local licensee that, at the request of and with support from the community of license, seeks to extend service from its one station to an outlying rural area that it already knows and partially serves. The local diversity credit also would favor the non-local applicant

⁴² For purposes of determining ownership diversity, the proposed point system would take into account other stations owned by any “parent” organization and any LMA or similar arrangements.

⁴³ See FNPRM at ¶ 21.

over the local applicant that seeks to respond to community interests and needs by establishing a much-needed second NCE service, such as a jazz format station. The Commission should avoid such harmful results by rejecting its proposed local diversity credit.

3. Spectrum Efficiency Credits

A third objective of communications policy has been to assure the efficient use of the spectrum.⁴⁴ Under Section 307(b) of the Communications Act, as amended, the Commission has an obligation to “provide a fair, efficient and equitable distribution of radio service.”

Accordingly, NPR, APTS and CPB suggest several criteria to help further these objectives.

a. Fair distribution of service credits.

As suggested in the FNPRM, the Commission should award two points to the applicant that proposes the first full-time NCE aural or first full-time NCE video service received by a community, and one point to the applicant that proposes the second full-time NCE aural or second full-time NCE video service received by a community.⁴⁵ These credits will help fulfill the Commission’s obligations under Section 307(b) of the Communications Act and carry out the Congressional policy of making public broadcast service available to all citizens of the United States.⁴⁶

The Commission should not adopt its proposal to award a point to the first local service licensed to a community, however. The use of this credit would encourage manipulation of the

⁴⁴ See, e.g., In the Matter of Advanced Television Systems And Their Impact Upon The Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809, 12812 (1997); In the Matter of Revision of Rules and Policies for the Direct Broadcast Satellite Service, 11 FCC Rcd 1297, 1309 (1995).

⁴⁵ See FNPRM at ¶ 21.

⁴⁶ 47 U.S.C. § 396(a)(7).

process, causing some applicants to seek a small community with no other licensed broadcast stations, whether or not they intend to focus their broadcast service on the community. In addition, it would often breed nonsensical results if the community receiving its first licensed service already receives service from a multitude of NCE and commercial stations.

b. Technical differences credits.

The Commission also should award credits to applicants that propose substantially superior technical coverage, as the Commission has suggested.⁴⁷ Specifically, the Commission should award one point to an applicant that proposes a 10% or greater positive difference in the area and population to be served than a competing proposal. The area calculations should not include bodies of water or other uninhabited areas. If an applicant proposes to serve a 10% greater area and population than a second proposal, which in turn, is 10% greater than a third proposal, the first applicant should receive two points and the second applicant should receive one point. These credits carry out the Commission's spectrum efficiency objectives, while crediting only meaningful differences in service.

c. Governmental funding/PTFP eligibility credit.

The Commission also should award one point to applicants that receive state or local funding or are eligible to receive and have applied for Public Telecommunications Facilities Program ("PTFP") funding for the proposed facilities. First, if a state or local government has provided funding for the proposed facilities, it has determined, often on universal service grounds, that it is in the public interest to construct this facility to serve the proposed

⁴⁷ See FNPRM at ¶ 21.

communities. The Commission should credit these public interest determinations by state and local governments by awarding points for the receipt of such funding.

Second, the PTFP program was established to “extend delivery of public telecommunications services to as many citizens in the United States as possible by the most efficient and economical means.”⁴⁸ Since this carries out the Commission’s spectrum efficiency objectives, the Commission should award credit to entities that have applied for PTFP funding and meet the eligibility requirements for receipt of such funding.⁴⁹

d. Facilities improvement credits.

Two points should be awarded to an applicant that proposes a major modification to its existing full-power facilities in order to improve the technical service to its service area. For example, an applicant that seeks to move to an adjacent frequency in order to reduce interference with a co-channel station should receive a point over an applicant that filed a mutually-exclusive application to construct a new station. First, these credits will encourage the reduction of interference and the more efficient use of the spectrum. Second, these credits will reward the applicant with a history of service to its community of license that seeks to improve that service.

These points will be claimed in only a few of the mutually-exclusive applications before the Commission. Granting of these points will become even rarer if the Commission adopts its proposals to expand the definition of a minor change for NCE FM stations and to extend the application of first come/first served processing to minor changes applications by NCE FM

⁴⁸ See 15 C.F.R. § 2301.1(a).

⁴⁹ See, e.g., 15 C.F.R. §§ 2301.3, 2301.17(b)(1)-(2). No PTFP grant will be awarded until the PTFP administrator receives confirmation from the FCC that any necessary FCC authorizations will be granted. See 15 C.F.R. § 2301.18(d). Therefore, it is not practical to require receipt of

stations.⁵⁰ Nonetheless, the few applicants proposing facilities improvements to improve technical service to their service areas offer substantial benefits to the public which should be rewarded with an extra two points.

C. A Similar Point System Should Apply To FM And TV Translators, With Priorities for Fill-In Service And Displaced Translators

In the case of FM and TV translators, the Commission should use the point system described above, with a few exceptions. First, the Commission should not include the facilities improvement credit, which is inappropriate for these secondary services. Second, applicants proposing a fill-in service or replacement of a displaced translator should receive priority as the Commission applies the point system.

For FM translators, the Commission should first use the point system to compare only those applications that propose a fill-in service. Fill-in translator stations are important for full-service stations that are unable to provide service throughout their predicted contours, generally for reasons of topography. This conforms with the Commission's long-standing priority for fill-in translator services.⁵¹ It is also consistent with the fill-in service priority suggested by the Commission for FM translator lotteries.⁵² If there are no qualified FM translator applicants proposing a fill-in service, the Commission should then compare only those applicants proposing to replace a displaced translator in order to maintain an existing level of service.

PTFP funding in order to grant this credit.

⁵⁰ See In the Matter of 1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Notice of Proposed Rulemaking, MM Docket No. 98-93, FCC 98-117 ¶¶ 46-50.

⁵¹ 47 C.F.R. § 74.1233.

⁵² See FNPRM at ¶ 17.

With TV translators, the FCC should give priority to translators displaced as a result of the digital transition. In its Sixth Report and Order in the advanced television proceeding, the Commission decided to allow displaced television translator stations “to apply for a suitable replacement channel in the area without being subject to competing applications.”⁵³ Under the Sixth Report and Order, these applications would be considered on a first-come, first-served basis without waiting for a window to open. The priority proposed here is consistent with the Commission’s efforts to maintain existing levels of service when TV translators are displaced during the transition to digital television.

D. In The Event Of A Tie, The Commission Should Rule In Favor Of The Applicant With The Fewest Pending Applications Rather Than Imposing A Time-Sharing Arrangement Or Adopting Other Tie-Breaking Measures

If two or more applicants receive the same number of points, the Commission should award the license to the applicant with the fewest pending applications in the same aural or video broadcast service at the time of filing. This is more likely to advance the goal of diversity of ownership and programming. Furthermore, the applicant with fewer pending applications typically can meet its educational goals with only the few frequencies that it has sought, while the applicant with more pending applications can meet its educational goals even if a particular application is denied.⁵⁴ Moreover, the applicant with the larger number of pending applications, all things being equal, has a greater chance of securing a license elsewhere.

⁵³ See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Sixth Report and Order, MM Docket No. 87-268, ¶ 144 (rel. April 21, 1997).

⁵⁴ Cf. FNPRM at n. 26 (“Given a choice between two NCE applicants, one that can only meet its educational goals within a small specific geographic region, and one that can operate equally well from another location, we believe it is most efficient to give a preference to the local applicant”).

Examining the number of pending applications to break a tie also could help discourage speculative filings. However, to do so, the Commission must count the number of applications at the time of filing rather than at a later date. Otherwise, applicants might file a large number of applications, then withdraw certain applications once they assess the merits of the other mutually-exclusive applicants.

If the tied applicants have the same number of pending applications, then the Commission might consider giving the applicants the opportunity to reach a settlement.⁵⁵ If even these measures fail to decide the proceeding, the Commission should use a lottery to break the tie because the remaining applicants will be equally qualified to hold the license at this stage of the process.⁵⁶ The lottery should not be weighted because the point system already will have assessed the relative merits of the applicants.⁵⁷

In any event, the Commission should reject its proposal to require applicants to share a channel in case of a tie.⁵⁸ Mandatory channel-sharing arrangements force organizations with different objectives, audiences, staffing, program policies and approaches toward funding station operations to share a frequency. These arrangements prevent stations from developing a solid public identity and consistent program schedule, thereby resulting in listener confusion, a

⁵⁵ See 47 C.F.R. § 74.913(d) (allowing settlements if the ITFS point system results in a tie).

⁵⁶ See FNPRM at ¶ 27.

⁵⁷ A legislative change may be necessary to permit unweighted lotteries in these very limited circumstances. This could be accomplished in connection with the legislative change to permit Commission staff to apply the ITFS point system pursuant to delegated authority. See *supra* n.16; FNPRM at n. 22.

⁵⁸ See FNPRM at ¶ 26.

reduction in listenership and listener loyalty and support, and a reduction in the ability of the station to respond to community interests and needs.⁵⁹

The Commission also should reject the use of a finder's preference as a tie-breaker for both full-service and translator stations. As the Commission stated, a finder's preference raises concerns about a "land rush" for noncommercial frequencies.⁶⁰ This threat is no less serious in the FM translator services where, based on a recent count, several applicants have over 100 applications pending. Likewise, the Commission should not use factors such as local presence, state-wide plans, or representativeness of leadership to break a tie.⁶¹ These factors are more appropriate for direct use in a point system.

E. A Holding Period Will Ensure That The Use Of A Point System Results In Meaningful Service To The Public

NPR, APTS and CPB wholeheartedly agree with the Commission's proposal to establish a holding period for NCE licenses awarded on the basis of point system preferences. During the holding period, the winning applicant must hold the license and maintain the factors for which it received preferences. To enforce this holding period, the winning applicant must certify annually to its continued eligibility for the points it received.⁶²

⁵⁹ See Joint Comments of APTS and NPR in MM Docket No. 95-31 at 17-18 (May 15, 1995). Notwithstanding the foregoing, if applicants determine that they can settle a tie through a time-sharing arrangement, they should be permitted to do so. In these rare circumstances, the entities will have determined a way to resolve or minimize the negative effects of time sharing.

⁶⁰ See FNPRM at ¶ 25.

⁶¹ See *id.* at ¶ 28.

⁶² See *id.* at ¶¶ 29-30.

The Commission should consider adopting an eight-year holding period, to coincide with the length of a full license term. This holding period could be waived only in extraordinary circumstances. However, absent resolution of its long-pending proceeding concerning transfers of control of non-stock entities,⁶³ the Commission should not consider a gradual change in the composition of the board -- an inevitable occurrence on a non-profit board -- as a transfer of a license, provided that the licensee maintains the factors for which it received points under the point system.

F. Sufficient Information About The Applicants Must Be Available For Applicants To Confirm Competing Proposals

To ensure the integrity of the point system process, sufficient information must be available to enable competing applicants and the Commission to confirm the accuracy of an applicant's point system credit claims and, if necessary, to challenge such claims. Therefore, once the Commission issues a public notice indicating the existence of mutually-exclusive NCE applications, the parties should be given 30 days to supply additional documentation in support of their credit claims. This documentation, if not already provided with the original application, should include: articles of incorporation, bylaws, the most recent audited financial statement or IRS Form 990, names and addresses of any parent entities, names and addresses of officers and directors, sources of funding for proposed facilities, a description of the "local" elements represented on the board (if a representativeness credit is claimed), a list of other station licenses and pending applications, engineering support for any fair distribution of service, technical differences or facilities improvement credits claimed, and documentation of government funding and/or PTFP application.

⁶³ Transfers of Control of Certain Licensed Non-Stock Entities, MM Docket No. 89-77.

After submission of all relevant information, parties should be given 30 days to file petitions to deny any of the competing applications. The Commission should use the same process it adopted for the ITFS point system to review these petitions to deny.⁶⁴ Only those petitions filed against the point system's tentative selectee should be reviewed by the Commission. When no substantial or material questions of fact are raised, the Commission should grant a license to the tentative selectee. If a petition to deny raises material questions of fact, the tentative selectee's application should be designated for hearing pursuant to Section 309(e) of the Communications Act. If the administrative law judge decides that the evidence requires the reduction of points or dismissal of the tentative selectee's application, the matter should be remanded to the Mass Media Bureau, which will then reapply the point system to the remaining mutually-exclusive applications. Since the foregoing process has not imposed any burden on the Commission or ITFS applicants, there is no reason to expect its application in this context to burden the Commission or NCE applicants.

III. When An NCE Entity Is A Mutually-Exclusive Applicant For A Non-Reserved Frequency, The Commission Should Use A Special NCE Processing Track Or An NCE Reservation And Hybrid Point System Approach To Award The License

In the FNPRM, the Commission also proposes a number of options for resolving competing applications for non-reserved frequencies where one or more of the applicants is an NCE entity. The options include: (a) current or modified auction procedures, (b) reserving additional spectrum for NCE use, (c) finding NCE entities ineligible for non-reserved spectrum, (d) establishing a special NCE processing track, or (e) a hybrid procedure using a combination of a point system or lotteries and an auction. NPR, APTS, and CPB strongly oppose using auctions or finding NCE entities ineligible for non-reserved spectrum in order to decide among these

⁶⁴ See 47 C.F.R. § 74.912; ITFS Order at ¶¶ 63-64.

mutually-exclusive applications. The Commission should instead adopt a special NCE processing track when an NCE entity applies for non-reserved spectrum. In the alternative, the Commission should both permit the reservation of additional spectrum for NCE use and adopt a hybrid approach using the point system described below.

A. Subjecting NCE Applicants To Auctions Would Violate Both The Balanced Budget Act of 1997 And Public Policy

As Commissioners Furchtgott-Roth and Tristani stated in their Separate Statement to the FNPRM, “We believe that Congress’ mandate is clear: the Commission lacks authority to employ auctions to issue licenses to such [noncommercial educational broadcast or public broadcast] stations, regardless of whether they operate on a reserved or on a commercial frequency.”⁶⁵

The Balanced Budget Act of 1997 provides that the competitive bidding authority granted by the Act “shall not apply to licenses or construction permits issued by the Commission ... for stations described in section 397(6) of this Act.”⁶⁶ Section 397(6) of the Communications Act refers to a “television or radio broadcast station” which:

- (A) under the rules and regulations of the Commission in effect on November 2, 1978, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or

⁶⁵ See FNPRM, Separate Statement of Commissioners Harold Furchtgott-Roth and Gloria Tristani, at 1; see also Competitive Bidding for Commercial Broadcast and ITFS Service Licenses, First Report and Order, MM Docket No. 97-234, FCC 98-194, Separate Statement of Commissioners Harold Furchtgott-Roth and Gloria Tristani, at 1 (August 18, 1998).

⁶⁶ Balanced Budget Act of 1997, Section 3002(a)(2), Pub. L. No. 105-33, 111 Stat. 258 (codified as amended at 47 U.S.C. § 309(j)(2)(C)).

(B) is owned and operated by a municipality and which transmits only noncommercial programs for education purposes.⁶⁷

Section 397(6) is *not* limited to stations located on the few FM and television channels reserved for noncommercial educational broadcasters, but applies on its face to *all* noncommercial educational broadcasters regardless of their location on the AM, FM or television band.⁶⁸

Moreover, the legislative history underlying the auction provisions of the Balanced Budget Act demonstrates Congress's intent to exempt public broadcasting applicants regardless of whether the particular frequency applied for is in the reserved or non-reserved spectrum. The original House and Senate bills, which were not enacted, would have expressly limited the auction exemption to applications for "channels reserved for noncommercial use."⁶⁹ However, the House-Senate conference eliminated this distinction between reserved and non-reserved spectrum. Under well-established canons of statutory construction, "[w]here Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended."⁷⁰ Accordingly, the auction exemption cannot be limited to reserved noncommercial frequencies.

As further evidence of Congress's intent to exempt all NCE broadcasters from auctions, it is important to note that the reservation of certain channels for noncommercial use is not a

⁶⁷ 47 U.S.C. § 397(6).

⁶⁸ See Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 475 (1992) ("[W]hen a statute speaks with clarity to an issue ... inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished.").

⁶⁹ S. 947, 105th Cong., 1st Sess., § 3001(a)(1) (not enacted); H.R. 2015, 105th Cong., 1st Sess., § 3301(a)(1) (enacted as amended).

⁷⁰ Russello v. United States, 464 U.S. 16, 23-24 (1983).

function of Federal statutory law, but of FCC rules. These rules, which were designed to guarantee the availability of a minimum, rather than a maximum, of spectrum for public broadcasters, permit public broadcasters to operate throughout the broadcast spectrum. The Commission routinely issues licenses and construction permits to stations described in Section 397(6) throughout the AM, FM and TV spectrum upon the simple filing of an application demonstrating the applicant's eligibility for an NCE broadcast station.⁷¹ NCE FM stations operating on non-reserved channels are governed by the same rules that are applicable to NCE FM stations in the reserved band, with the exception of certain technical rules.⁷² Moreover, NCE FM translators are defined as any "FM broadcast translator station which rebroadcasts the signals of a noncommercial educational FM radio broadcast station," regardless of whether the translator or full-service station are located on the reserved or non-reserved band.⁷³ Thus, based on the plain language of the statute and Congressional intent, the Balanced Budget Act exempts from auctions all applications for new or modified NCE broadcast permits or licenses, whether or not the applications are for stations on reserved or non-reserved frequencies.

Not only would subjecting NCE entities to auctions violate the Balanced Budget Act of 1997, but it also would harm the public interest by restricting the diversity of voices and viewpoints available on the public airwaves. Access by public broadcasters to non-reserved spectrum is often essential in order to extend or even maintain public broadcast service. Yet, auctions would effectively close many of these frequencies to public broadcasters, who are in no

⁷¹ See 47 C.F.R. § 73.1690(c).

⁷² 47 C.F.R. § 73.513.

⁷³ 47 C.F.R. § 74.1201(c).

position to compete financially in auctions with commercial broadcasters for broadcast frequency assignments.⁷⁴

In the case of public radio, much of the reserved FM band is either filled or unsuitable for additional full-service or FM translator stations because of FCC rules requiring stations in the reserved FM band to protect against interference to television channel 6 stations,⁷⁵ the presence of other spectrum users,⁷⁶ or proximity to Canada or Mexico.⁷⁷ There are *no* reserved channels in the AM band. Thus, approximately 37 NPR members have established full-service NCE radio stations on the non-reserved FM band, and approximately 29 NPR members have established full-service NCE radio stations on the AM band.

Moreover, many NCE FM translators are located on the non-reserved band. For example, 12 of Minnesota Public Radio's 18 FM translators are currently located outside of the reserved FM band. These translator services are especially important to many rural and isolated

⁷⁴ Public broadcasters have tight budgets funded primarily through charitable contributions or government funding. Whatever extra money they have is reinvested in the production or acquisition of additional high-quality programming or will be used in the conversion to digital broadcasting. They cannot rely upon later profits to recoup an auction investment and would have serious difficulties finding a lending institution that would provide financing for an auction bid.

⁷⁵ See 47 C.F.R. §§ 73.525, 74.1205, 74.1202(b)(3).

⁷⁶ See 47 C.F.R. §§ 73.503(b), 74.1202(b)(3); Amendment of Parts of the Commission's Rules Governing Frequency Allocations and Radio Treaty Matters, 90 F.C.C.2d 507 (1982) (requiring Alaskan radio stations operating in the frequency band 88-100 MHz to protect against common carrier operations existing on the band prior to 1982).

⁷⁷ See 47 C.F.R. §§ 73.504, 74.1235(d). See also Letter from Charles W. Logan, Chief, Policy and Rules Division to Mr. Joel Lawrence Efrein, DA 98-2560 (Dec. 21, 1998) (denying petition to reserve FM channel 300 for very-low-power FM radio, stating "The FM broadcast spectrum is heavily used, with many stations operating on each and every channel. For most, if not all, existing stations, there are not alternate channels available to which they could move in

communities which otherwise would not receive public radio service. The list attached as Exhibit 4 of FM translators in each state licensed to CPB grantees demonstrates the importance of such services to states with significant rural populations and isolating terrain. Since FM translators are a “secondary” service, they frequently must be relocated in order to ensure that the translator does not cause any actual interference to a new or newly-modified full-service station.⁷⁸ If public broadcasters must participate in auctions every time they are forced to relocate an FM translator, there could be a downward spiral in public radio coverage and, as a result, a silencing of diverse programming in many parts of the country.

In the case of television, there are 15 full-service public television stations operating on non-reserved channels. Further, there are *no* reserved NCE channels for TV translators. Many of the 787 TV translators licensed to public television stations will be forced to seek new frequencies during the transition to digital television. These TV translators provide the only public television service available to at least 2,551,714 people.⁷⁹ If the Commission subjects NCE applicants to auctions, many of these people will lose access to a public television signal.

Public broadcasters make a critical contribution to the diversity of voices and programming available to the public. The Commission has found that public broadcasters offer

conformance with our rules”).

⁷⁸ See 47 C.F.R. § 74.1203.

⁷⁹ See Corporation for Public Broadcasting, Analysis of Impact of Elimination of Translators (September 1998), Memorandum from Jerry Ostertag, Manager, Station Development, CPB, to Doug Weiss, Vice President, Television Operations, CPB, attached as Exhibit 5. This is a very conservative estimate that does not include individuals served by translators used to fill in holes in a primary transmitter’s service area. If those individuals are included, it is likely that some undetermined percentage of the remaining 9,533,592 people served by translators also receive their only public television service from a TV translator.

diverse programs that meet “cultural and informational interests often given minimal attention by commercial broadcasters.”⁸⁰ Congress intended all citizens of the United States to have access to the diverse programming offered by public broadcasters.⁸¹ To maximize the diversity of voices and programming available to the public and to achieve Congress’ goal of universal public telecommunications service, public broadcasters must be able to continue expanding their services to reach additional unserved and underserved communities, as well as to preserve their current level of service. They can do that only if the Commission rejects the option of subjecting NCE entities to auctions.⁸²

B. Finding NCE Entities Ineligible For Non-Reserved Channels Would Severely Limit The Availability Of Public Broadcasting Services

The option of finding NCE entities ineligible for non-reserved channels altogether would be devastating to the public interest and must be rejected.⁸³ It would immediately halt the growth of public broadcasting and ultimately decrease the availability of public broadcasting, in violation of congressional policy and the public interest.

The proposal to find NCE entities ineligible for non-reserved channels is totally lacking in any legal basis or other support. The FCC reserved small portions of the spectrum for NCE

⁸⁰ Ascertainment of Community Problems by Noncommercial Educational Broadcast Applicants, 58 F.C.C.2d 526, 536 (1976).

⁸¹ See 47 U.S.C. § 396(a)(7).

⁸² See also Joint Comments of NPR, NFCB and CPB in MM Docket No. 97-234, GC Docket No. 92-52, GEN Docket No. 90-264 (January 26, 1998); Comments of APTS in MM Docket No. 97-234, GC Docket No. 92-52, GEN Docket No. 90-264 (January 26, 1998).

⁸³ Indeed, this option is worse for the public interest than the auction option. If the Commission adopts auctions, there may be some frequencies that are not subject to mutually-exclusive applications and thus may be obtainable by NCE broadcasters. If the Commission adopts the ineligibility option, even those frequencies will be unavailable to NCE broadcasters.

radio and NCE television in order to promote the development of noncommercial educational broadcasting,⁸⁴ not to restrict its development, as this proposal would accomplish. Also, as noted above, the portion of the FM band reserved for noncommercial use suffers from a number of interference problems.

Moreover, this proposal would severely restrict the diversity of voices and programming available to the public. As discussed in Section III.A. above, access to non-reserved frequencies is often essential in order to extend public broadcast services to unserved or underserved communities or even to maintain existing levels of service. Indeed, the Commission stated earlier in the FNPRM that “we are sensitive to the fact that some noncommercial educational radio and television stations may, for technical reasons, have no choice but to operate on unreserved frequencies.”⁸⁵ If the Commission decides to render NCE entities ineligible for non-reserved spectrum, it would halt all further development of the public broadcasting system and violate the Congressional goal of ensuring universal public telecommunications service.⁸⁶

Even if the Commission were to grandfather those NCE broadcasters already located on non-reserved frequencies, rendering NCE entities ineligible for non-reserved frequencies would ultimately decrease public broadcast coverage, by denying access to spectrum to replace spectrum used by current incumbent broadcasters. Thus, the Commission’s tentative conclusion

⁸⁴ See, e.g., Amendment of Section 3.606 of the Commission’s Rules and Regulations; Amendment of the Commission’s rules, Regulations and Engineering Standards Concerning the Television Broadcast Service, 41 F.C.C. 148, ¶¶ 33-53 (1952).

⁸⁵ FNPRM at ¶ 37.

⁸⁶ See 47 U.S.C. § 396(a)(7). Only 91% of all Americans currently receive one or more public radio signals. Corporation for Public Broadcasting, Frequently Asked Questions About Public Broadcasting, at 14 (1997).

that this option would have no significant impact on NCE stations already operating on commercial channels is entirely wrong.⁸⁷

First, the many TV translators required to seek new frequencies during the transition to digital television would be forced off the air, since there are no reserved frequencies for TV translators. In the Rocky Mountain states alone, approximately 95 public television translators located on Channels 60-69 will require replacement frequencies. Second, many licensees of FM translators located on the non-reserved band that are forced to relocate because of interference to new or newly-modified full-service stations will not be able to find another frequency in order to maintain existing service. Third, full-service television and radio stations currently located on non-reserved frequencies could be subject to auctions if they file a major modification application. Although most modification applications are not subject to competing applications, NCE stations would still be unfairly limited in their ability to modify their stations in order to better serve their listeners. Accordingly, the Commission must summarily reject the proposal to find NCE entities ineligible for non-reserved frequencies.

C. The Commission Should Adopt A Special NCE Processing Track Where One Or More Of The Applicants Is An NCE Broadcaster

Instead of adopting the auction or ineligibility options, the Commission should establish a special NCE processing track when an NCE entity applies for non-reserved spectrum, as APTS suggested in the auctions proceeding.⁸⁸ Specifically, once an NCE entity files a technically-acceptable application for a non-reserved frequency, the channel should be deemed reserved for

⁸⁷ See FNPRM at ¶ 39.

⁸⁸ See *id.* at ¶¶ 40-42; Comments of APTS in MM Docket No. 97-234, GC Docket No. 92-52, GEN Docket No. 90-264 (January 26, 1998).

noncommercial educational use. Once reserved for NCE use, only other NCE entities could file applications for the frequency. The Commission would use the point system described above to choose between any competing NCE applications.

This special NCE processing track best carries out the intent of the Balanced Budget Act of 1997 exemption for noncommercial educational broadcasters. Public broadcasters typically file applications only after they have ascertained a significant need for service in that community. However, to discourage a significant reallocation of commercial channels to NCE use, the Commission could limit the number of applications that an NCE applicant may file under the special NCE processing track. To prevent NCE broadcasters from using the special processing track to acquire and sell licenses privately to commercial entities at a substantial profit, the Commission might simply prohibit transfers to entities for commercial broadcast operation.

D. In the Alternative, The Commission Should Allow NCE Stations To Reserve Additional Spectrum And Adopt A Hybrid Point System Approach

If the Commission does not adopt a special NCE processing track, it should adopt both of the following options: (a) allowing NCE broadcasters to reserve additional spectrum, and (b) a hybrid point system/auction approach.

1. The Commission Should Permit NCE Entities To Reserve Additional Spectrum For NCE Use.

First, the FCC should expand the circumstances under which an NCE broadcaster can reserve additional spectrum for noncommercial educational use.⁸⁹ Specifically, in addition to

⁸⁹ See FNPRM at ¶ 37. The FCC suggests this option in the event that it decides to subject NCE entities to auctions. If the Commission ignores the Balanced Budget Act of 1997 and public policy considerations and decides to subject NCE entities to auctions, then it also should expand the options under which an NCE entity can reserve spectrum for NCE use. However, this option is also appropriate if the Commission does not choose the auction or special NCE processing track options.

existing circumstances permitting reallocation of spectrum, the Commission should allow reservation of additional spectrum for NCE use in the event NCE entities would be precluded from serving their proposed communities of license using the reserved band by existing reserved band stations or pending applications. This would serve the public interest by increasing the diversity of voices and programming available to the proposed communities.⁹⁰

At the very least, the FCC should allow reservation of additional spectrum for NCE use in the event that “(a) the NCE entities would be precluded from serving their proposed communities of license using the reserved band by existing reserved band stations or pending applications, and (b) the proposed allotment would provide the first or second NCE aural or NCE video service received in the community,” as the Commission has suggested.⁹¹ This option would serve the diversity interests described above. It would also help fulfill the Commission’s Section 307(b) obligations and carry out the Congressional policy of making public broadcast service available to all citizens of the United States.⁹²

An NCE broadcaster that receives a license by reserving additional spectrum should be permitted to transfer the license to another NCE entity without restriction. On the other hand, it is appropriate to prohibit the applicant from transferring the license to an entity for operation as a commercial station. Thus, the NCE broadcaster might transfer the license to an entity for continue public broadcast operation or return the license to the FCC.

⁹⁰ See, e.g., Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licenses, 98 F.C.C.2d 746, 751 (1984) (noting that public broadcasters provide a “significant alternative programming designed to satisfy the interests of the public not served by commercial broadcasters”).

⁹¹ See FNPRM at ¶ 37.

⁹² 47 U.S.C. § 396(a)(7).

2. The Commission Also Should Adopt A Hybrid Point System Approach

In other cases, where prior reservation of a frequency does not occur, the Commission should undertake a hybrid approach using a point system to determine whether an NCE applicant is the best qualified applicant. If an NCE applicant is more qualified than all of the other commercial applicants, then the NCE applicant should receive the authorization. If an NCE applicant is not the most qualified applicant, then market forces can determine the outcome of the proceeding through the use of an auction. The hybrid approach would proceed as follows:

First, if there are multiple NCE applicants for a frequency, these NCE applicants should be compared using the point system described in Section II for competing NCE applications. The winning NCE applicant would then be compared with the commercial applicants for the frequency. Otherwise, the use of a point system applicable to both NCE and commercial applicants might result in the selection of an NCE applicant that is more qualified than the other commercial applicants but less qualified than the other NCE applicant according to the NCE point system standards.

Second, the Commission should use a point system relevant to both NCE and commercial broadcast services to compare the winning NCE applicant and all of the commercial applicants.

The point system should include the following credits:

- a. Local headquarters credit. (See Section II.B.1.a.)
- b. Local directors and officers credit. (See Section II.B.1.b)
- c. Local funding credit. (See Section II.B.1.c.)
- d. Diversity of ownership credits. (See Section II.B.2.a.)
- e. Fair distribution of service credits.

Unlike the NCE point system proposed by NPR, APTS and CPB, the fair distribution of service credit proposed here has two components. First, the Commission should award two points for the applicant – commercial or noncommercial – that proposes the first full-time aural or first full-time video service received by a community, and one point for the applicant that proposes the second full-time aural or second full-time video service received by a community. These credits would carry out the Commission’s obligations under Section 307(b) of the Communications Act, as amended. Second, the Commission should award two points for the NCE applicant that proposes the first full-time *NCE* aural or first full-time *NCE* video service, and one point to the applicant that proposes the second full-time NCE aural or second full-time NCE video service received by a community. (See Section II.B.3.a.). Although these credits could be awarded only to NCE applicants, they are appropriate to carry out the Congressional policy of making public broadcast service available to all citizens of the United States.

f. Technical differences credits. (See Section II.B.3.b.)

g. Facilities Improvement credits. (See Section II.B.3.d.)

3. Post-Point System Procedures

If, after applying this point system, the Commission finds that the NCE applicant is the most qualified to serve the public interest, then the NCE applicant should receive the FCC authorization. If the Commission finds using the point system that one of the commercial applicants is the most qualified to serve the public interest, then the Commission should hold an auction in accordance with the procedures set forth in its Competitive Bidding decision. A tie between the NCE applicant and one or more commercial applicants after application of the point system should be resolved using the same tie-breaking mechanisms as NPR, APTS and CPB propose in Section II.D. for ties between NCE applicants. The holding period described in

Section II.E. should apply to any NCE applicant that receives a license over commercial applicants as a result of point system preferences. Finally, applicants should have access to the same relevant information as described in Section II.F.

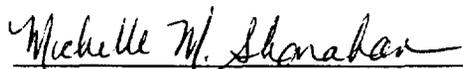
4. A Similar Point System Should Apply To FM And TV Translators, With Priorities for Fill-In Service And Displaced Translators

If an NCE entity is one of the competing applicants for an FM or TV translator on the non-reserved band, the Commission should use the same hybrid point system approach described above, with several exceptions. Like the point system used for competing NCE FM or TV translator applications, the Commission should not use the facilities improvement credit for secondary translator services. In addition, in the case of FM translators, the Commission should first use the point system to compare only those applications that propose a fill-in service. If there are no such applicants, the Commission should compare only those applicants proposing to replace a displaced translator in order to maintain an existing level of service. In the case of TV translators, the Commission should give priority to displaced TV translators.

CONCLUSION

For these reasons, NPR, APTS and CPB respectfully urge the Commission to adopt a meaningful point system, which selects the applicant that will best serve the FCC objectives of localism, diversity and spectrum efficiency, to resolve competing NCE applications. NPR, APTS and CPB further urge the Commission to reject auctions and spectrum restrictions when an NCE entity is one of the competing applicants for non-reserved broadcast spectrum. Instead, the Commission should adopt a special NCE processing track or a combination of (a) allowing NCE broadcasters to reserve additional spectrum, and (b) a hybrid point system approach.

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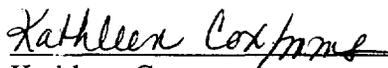
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Two-thirds of the stations' broadcasts were music based and classical music or jazz described three-fourths of the music broadcasts. Jazz based programming was found on more schedules (86%) than classical base (76%); however, the weekly average of classical music (69 hours) was more than twice the weekly average of jazz (29 hours).

Most of the stations had news and information each week. It was broadcast weekdays by 92 percent of the stations, Saturdays by 84 percent, and Sundays by 82 percent.

Most of the entertainment programming (76%) occurred weekends and nearly half was broadcast on Saturday. Saturday evening at 6 p.m. during PRI's *A Prairie Home Companion*, entertainment carriage peaked with 51 percent of the stations. Earlier in the day, NPR's *Car Talk* and PRI's *Whad'ya Know?* also appeared on many schedules.

	Peak Carriage	
	Hour	Percent of Stations
Classical Music Base	Weekdays, 10 a.m.	54%
Jazz Base	Saturday, 11 p.m.	42%
World Music Base	Sunday, 11 p.m.	27%
Folk Music Base	Saturday, 8 p.m.	21%
Pop Music Base	Saturday, 10 p.m.	15%
News and Information Base	Weekdays, 5 p.m.	80%
Entertainment Base	Saturday, 6 p.m.	51%

The peak carriage of the week for classical music programming occurred weekdays at 10 a.m. when 54 percent of the stations aired classical. The other music formats each reached their highest carriage of the week during weekend evenings.

Weekdays at 5 p.m. the stations were the most likely to have made similar choices in programming: eighty percent were airing news and information.

The broadcast shares have shifted slightly since 1992: the classical music share has decreased and the shares for news and information and other formats have increased.

	Percent of Weekly Broadcasts			
	Classical Music Base	Jazz Base	News & Info.	Other Formats
Spring 1996	34%	16%	29%	22%
Spring 1995	35%	17%	28%	21%
Spring 1994	35%	17%	27%	21%
Spring 1993	36%	16%	27%	21%
Spring 1992	39%	16%	27%	20%

Sources of Programming

All of the stations aired both local and national programming each week. In 1996, the total broadcasts were equally divided between local and national programming. Prior to 1996, local programming had a majority of the week's broadcasts by a slight margin.

	Percent of Stations		Percent of Weekly Broadcasts	
	1995	1996	1995	1996
Local Programming	100%	100%	51%	50%
National Public Radio	88%	84%	23%	22%
Public Radio International	84%	87%	15%	17%
Other National Sources	96%	95%	11%	11%

Public Radio International (PRI) programming was carried by 87 percent of the stations, surpassing the percentage carrying National Public Radio (NPR) programming (84%) for the first time in the study. The stations averaged forty hours per week of NPR programming and thirty hours per week of PRI programming.

Most of the stations (95%) broadcast programming from at least one of the "other national sources." These broadcasts accounted for eleven percent of the total.

Weekdays at 10 a.m. the largest share of the stations (76%) were producing their own programming. Local programming carriage remained high until afternoon drive time began. It accounted for 73 percent of the broadcasts weekdays from 9 a.m. to 4 p.m.

	Peak Carriage	
	Hour	Percent of Stations
Local Programming	Weekdays, 10 a.m.	76%
National Public Radio	Weekdays, 6 a.m.	67%
Public Radio International	Saturday, 6 p.m.	55%
Other National Sources	Saturday, 3 p.m.	30%

NPR's peak carriage occurred weekdays at 6 a.m. during *Morning Edition*. NPR carriage was also high during its evening counterpart, *All Things Considered*.

PRI's carriage reached its height on Saturday evening at 6 p.m. during the live broadcast of Garrison Keillor's *A Prairie Home Companion*. PRI carriage was also strong (30% to 40% of the stations) during the overnights with their three services: *Classical 24*, *BBC World Service*, and *Jazz After Hours*.

Saturday at 3 p.m., when many stations broadcast opera, carriage of other national sources was at its peak (30%).

Format Carriage by Source

Two-thirds of public radio's music programming was locally produced. Classical music (52% of the total music broadcasts) had the smallest share of local productions with national distributors providing nearly half of the broadcasts.

Stations relied on national distributors for most of their news and information and entertainment programming. NPR provided 61 percent of the news and information and PRI provided 47 percent of the entertainment.

	Percent of Weekly Broadcasts			
	Local	NPR	PRI	Other Sources
Classical Music Base	52%	6%	22%	20%
Jazz Base	84%	5%	5%	6%
World Music Base	63%	0%	26%	11%
Folk Music Base	84%	10%	1%	5%
Pop Music Base	91%	0%	9%	1%
Eclectic Music Base	100%	0%	0%	0%
News and Information Base	13%	61%	18%	8%
Entertainment Base	15%	22%	47%	17%
Targeted Audience Base	89%	0%	3%	8%

Targeted audience programming, including ethnic, religious, instructional, and children's programming, was mostly locally produced (89%).

Source Carriage by Format

Local productions were most likely one of three format bases: classical music (35%), jazz (27%), or pop music (12%).

The stations' NPR broadcasts were primarily news and information (82%). The majority of the PRI broadcasts were classical music (44%) and news and information (31%).

	Percent of Weekly Broadcasts			
	Classical Music Base	Jazz Base	News & Info.	Other Formats
Local Programming	35%	27%	7%	31%
National Public Radio	9%	4%	82%	5%
Public Radio International	44%	5%	31%	20%
Other National Sources	58%	8%	21%	13%

Carriage Patterns by Location

Classical music averages were highest in the eastern time zone. Jazz had the highest averages on the coasts and in areas with populations greater than one million. The urban areas also had the highest averages of news and information.

	Average Number of Hours per Week		
	Classical Music Base	Jazz Base	News & Information
<i>Total</i>	69	29	48
<i>Time Zone</i>			
Eastern	79	33	45
Central	72	29	52
Mountain	59	21	42
Pacific	55	30	48
Alaska/Hawaii	22	11	53
<i>Area Population</i>			
less than 100,000	58	22	46
100,000 to 249,999	68	26	50
250,000 to 499,999	74	31	42
500,000 to 999,999	78	28	40
1,000,000 to 2,499,999	89	50	52
2,500,000 or more	50	40	70

Central time zone stations (33% of the stations) had the highest averages of NPR programming and eastern time zone stations (39%) had the most PRI programming.

Carriage Patterns by Budget Size

The stations with the largest budgets broadcast the most news and information, an average of 61 hours per week. They also had higher averages of classical music.

The poorest stations broadcast less news and information and more targeted audience and pop music. Limited resources also corresponded with increased local productions.

	Average Number of Hours per Week		
	Classical Music Base	Jazz Base	News & Information
<i>Individual & Network Flagships</i>	62	35	45
<i>Budget Size</i>			
less than \$300,000	22	36	29
\$300,000 to \$449,999	56	51	28
\$450,000 to \$599,999	56	44	42
\$600,000 to \$749,999	43	35	50
\$750,000 to \$999,999	86	31	39
\$1,000,000 or more	73	30	61

Nationally Syndicated Programming

We found 219 national programs with carriage of at least one percent of the stations in 1996. News and information described the largest share (40%) of the national programs, classical music described 26 percent, entertainment described 15 percent, and jazz described 11 percent.

The top syndicated programs in terms of percentage of stations carrying were as follows in 1996:

National Program	Percent of Stations
<i>All Things Considered</i>	70%
<i>Morning Edition</i>	69%
<i>Weekend Edition Saturday</i>	65%
<i>Weekend All Things Considered</i>	63%
<i>Car Talk</i>	62%
<i>Weekend Edition Sunday</i>	60%
<i>A Prairie Home Companion</i>	52%
<i>The Thistle and Shamrock</i>	43%
<i>Music from the Hearts of Space</i>	41%
<i>Rabbit Ears Radio</i>	41%

The Methodology

National Public Radio's Audience Research department conducted the research. The stations were contacted four times per year and a minimum response rate of ninety percent was achieved each quarter. Participation in the study has grown from 269 stations in 1986 to 633 stations in 1996. The most substantial increase in participation came in 1991 when we expanded the sample to include all stations benefiting from financial assistance from CPB which included the addition of the network repeater stations. The report highlights the findings of the spring quarter survey results.

If you have questions about this study, please contact Janice Jones at CPB. Her telephone number is 202-879-9677 and her e-mail address is jjones@cpb.org. We also welcome any comments or recommendations you may have which would make the data more useful.

Lisa Nackerud Ryan spent eight years working in National Public Radio's Audience Research department and is currently an independent consultant.





Research Notes

November 1997, No. 104

Elementary and Secondary Educational Services of Public Television Grantees Highlights from the 1997 Station Activities Survey

The following is a summary of a variety of K-12 educational services offered by CPB-supported television stations from CPB's annual Station Activities Survey. For analysis purposes, stations are broken into cohorts by license type and budget size.¹

Provision of Instructional Programming to Elementary and Secondary Schools

The 1997 Station Activities Survey asked public television stations whether they provided instructional programming to elementary or secondary schools or other educational institutions during the 1995-96 academic year, and if so, what means were used to deliver the programs to schools. A total of 144, or 81 percent of all stations, provided programming to elementary schools, and nearly as many provided programming to secondary schools (141, or 79 percent of all stations; see chart I). The most popular means of delivery was the full-power broadcast channel, which was used by approximately three out of four stations that provided instructional programming. Separately programmed cable channels were used by 17 percent of stations for both elementary and secondary school programming. ITFS services were less popular, used by only 10 percent of stations to deliver elementary school programming and by 11 percent to deliver secondary school programming.

Stations with small operating budgets were somewhat less likely than average to provide programming to schools; only 71 percent of small budget stations provided

1. Institutional licensees are those licensed to colleges, universities and state and local governments. Small operating budgets are defined as under \$2.5 million; medium operating budgets as \$2.5 to \$6.0 million; and large operating budgets as over \$6.0 million. All data are reported on a licensee basis.

elementary school programming, and 69 percent provided secondary school programming. Larger stations were somewhat more likely to deliver instructional programming via the main broadcast channel (perhaps because large stations were also much more likely than average to provide overnight block feeds of instructional programming on their main channel; see below). There were no significant changes in this area from the 1994-95 school year.

Use of Instructional Programming by Schools

Stations were asked to provide estimates of the number of school districts, buildings and teachers that used the instructional programs they provided (see chart II). Because many stations do not have exact counts available, they were encouraged to provide their best estimates; even so, about ten percent of the stations that provided programming to schools could not answer this series of questions. They have been eliminated from the analysis that follows, and the results should be interpreted with caution.

Public television stations providing programming to schools reported that a median of 39 school districts, 289 school buildings and 6,000 teachers used instructional programs they provided in Fiscal Year 1996. As might be expected, larger stations tended to serve more districts, schools and teachers than smaller stations, and many stations served schools outside their broadcast area. Institutional licensees also served slightly larger numbers. Although the number of teachers using stations' instructional programming ranged from a low of five to a high of 120,000, only sixteen stations reported serving more than 30,000 teachers.

Services to Schools

Stations were asked about a list of 11 services that they may have provided to schools during the academic year 1995-96 (see chart III). Only nine stations, or five percent of the total, reported providing no services at all to schools; the majority of those were small community licensees. The most popular services were providing advance schedules of general audience and instructional programming (provided by 81 percent and 70 percent of grantees, respectively), and previews of instructional programs, provided by 61 percent of grantees. About half of all large stations and institutional licensees (56 percent and 50 percent, respectively) offered interactive distance education. Large stations were far more likely to provide daytime and/or overnight block feeds of instructional programs to schools than smaller stations. The number of stations that offered electronic access to curriculum guides as of January, 1996, increased by almost ten percent (from 23 to 32 percent) from last year; large stations led the way in this area, with 44 percent of large institutional licensees and 46 percent of large community licensees offering electronic access.

National and Other Initiatives

Stations were asked to report on their current and planned participation in a series of educational initiatives (see chart IV). Thirty-four percent of stations reported offering PTV, The Ready to Learn Service on PBS in Fiscal Year 1996, and another 25 percent reported that they plan to introduce the service in FY 1997 or 1998. Other ready to learn services are more popular than PTV, with half of all stations offering them, but are growing more slowly; only 8 percent plan to begin offering a non-PTV ready to learn service in the next two fiscal years. Both types of ready to learn service are most popular among community licensees and larger licensees. In some cases, institutional licensees (especially colleges and universities) may be precluded from offering ready to learn during the day because of licensee-related programming, such as college telecourses, that are difficult to reschedule.

Seventy stations, or 39 percent of the total, reported participating in PBS' Mathline service in Fiscal Year 1996, and another 12 percent plan to begin participation in the next two fiscal years. Large institutional licensees had the highest participation rate at 47 percent.

The number of stations that reported offering instructional services on PBS Online almost doubled (from 17 percent last year to 31 percent) during Fiscal Year 1996. Another 14 percent expect to begin offering such services in FY 1997 or 1998. Thirty-three percent of small community licensees plan to introduce instructional services on PBS Online within the next two fiscal years. Forty-two percent of stations reported offering some other computer on-line educational service besides PBS Online, and a further 17 percent plan to introduce such a service within the next two years. As with PBS Online, the biggest area of planned growth is with small community licensees (37 percent), although there was already a strong presence of such services in FY 1996 in both large community and institutional licensees (63 percent and 56 percent, respectively).

Finally, stations were asked whether they provided utilization support for teachers using technology during FY 1996. Fifty-seven percent reported offering such support, and another 10 percent plan to begin offering it within the next two years. Large stations led the way in this area, with 73 percent offering technology utilization support.

General Equivalency Degree (G.E.D.) Programs

Over half of all stations (52 percent) reported offering a General Equivalency Degree (G.E.D.) program during the 1995-96 academic year. While community licensees were slightly more likely to offer G.E.D. programs than institutional licensees (55

percent versus 49 percent), there was no clear relationship between operating budget size and the operation of a G.E.D. program. Stations that reported offering G.E.D. programs were asked to provide an estimate of the number of students enrolled. More than 22 percent of the stations that offered G.E.D. programs could not answer this question. Data from those stations have been eliminated from the analysis that follows, and the results should be interpreted with caution.

Overall, stations reported a median of 200 G.E.D. enrollees. As might be expected, the number of enrollees increases with station size, ranging from a low of 100 for small stations to a high of 500 for the largest stations. Programs at institutional licensees tended to have more enrollees, with large institutional licensees reporting a median of 650 G.E.D. students.

Enrollment at all stations totalled 50,861. Large institutional licensees accounted for more than half of the total enrollment with 28,432 students.

Conclusions

Clearly, the level of service to education by public television stations of all types is high. While large stations tend to offer more instructional services than smaller ones, very few report providing no instructional services or programming at all. Where trend data or plans for future services are available, they indicate a continued strong commitment to educational services on the part of public television stations across the country.

If you have any questions about these data, please contact Wendy Charlton at 202/879-9672, fax 202/783-1019 or e-mail wcharlton@cpb.org. We also welcome any comments and recommendations about how to make the data more useful to you.

Chart I
Highlights of Public Television Educational Activities from the Station Activities Survey
1995-96 Academic Year
Grantees Offering Instructional Programming to Schools
By License Type and Budget Size

Operating Budget Size	Community Licensees				Institutional Licensees				All Licensees			
	Small	Medium	Large	Total	Small	Medium	Large	Total	Small	Medium	Large	Total
Number of grantees in category	27	27	35	89	24	33	32	89	51	60	67	178
Instructional programming to elementary schools:												
No Programming	7	4	4	15	8	9	2	19	15	13	6	34
Percent of total grantees	26%	15%	11%	17%	33%	27%	6%	21%	29%	22%	9%	19%
Programming on full-power broadcast channel(s)	20	21	29	70	16	21	29	66	36	42	58	136
Percent of total grantees	74%	78%	83%	79%	67%	64%	91%	74%	71%	70%	87%	76%
Programming on separate cable channel(s)	2	5	10	17	5	6	2	13	7	11	12	30
Percent of total grantees	7%	19%	29%	19%	21%	18%	6%	15%	14%	18%	18%	17%
Programming on ITFS channel(s)	0	4	6	10	3	3	2	8	3	7	8	18
Percent of total grantees	0%	15%	17%	11%	13%	9%	6%	9%	6%	12%	12%	10%
Instructional programming to secondary schools:												
No Programming	8	6	3	17	8	9	3	20	16	15	6	37
Percent of total grantees	30%	22%	9%	19%	33%	27%	9%	22%	31%	25%	9%	21%
Programming on full-power broadcast channel(s)	19	20	30	69	16	21	28	65	35	41	58	134
Percent of total grantees	70%	74%	86%	78%	67%	64%	88%	73%	69%	68%	87%	75%
Programming on separate cable channel(s)	2	4	10	16	4	8	2	14	6	12	12	30
Percent of total grantees	7%	15%	29%	18%	17%	24%	6%	16%	12%	20%	18%	17%
Programming on ITFS channel(s)	0	4	7	11	2	4	2	8	2	8	9	19
Percent of total grantees	0%	15%	20%	12%	8%	12%	6%	9%	4%	13%	13%	11%

Note: Operating budget size is defined as follows: Small: Less than \$2.5 million. Medium: \$2.5 to \$6.0 million. Large: Over \$6.0 million.

Chart II
Highlights of Public Television Educational Activities from the Station Activities Survey
Fiscal Year 1996
Number of School Districts, Buildings and Teachers Utilizing Programming
By License Type and Budget Size

Operating Budget Size	Community Licensees				Institutional Licensees				All Licensees			
	Small	Medium	Large	Total	Small	Medium	Large	Total	Small	Medium	Large	Total
Number of grantees in category	27	27	35	89	24	33	32	89	51	60	67	178
Median number of school districts served	14	26	87	36	28	32	96	43	22	33	107	39
Number of grantees reporting on districts	20	23	30	73	16	23	30	69	36	46	60	142
Percent of total grantees	74%	85%	86%	82%	67%	70%	94%	78%	71%	77%	90%	80%
Median number of school buildings served	103	232	500	232	118	230	879	340	125	242	800	289
Number of grantees reporting on buildings	19	21	27	67	15	24	30	69	34	45	57	136
Percent of total grantees	70%	78%	77%	75%	63%	73%	94%	78%	67%	75%	85%	76%
Median number of teachers served	1635	5000	15000	6000	2750	5150	18000	6300	1539	7000	18538	6000
Number of grantees reporting on teachers	19	21	27	67	15	22	29	66	34	43	56	133
Percent of total grantees	70%	78%	77%	75%	63%	67%	91%	74%	67%	72%	84%	75%

Note: Operating budget size is defined as follows: Small: Less than \$2.5 million. Medium: \$2.5 to \$6.0 million. Large: Over \$6.0 million.

Chart III
Highlights of Public Television Educational Activities from the Station Activities Survey
1995-96 Academic Year
Grantees Providing Services to Schools
By License Type and Budget Size

Operating Budget Size	Community Licensees				Institutional Licensees				All Licensees			
	Small	Medium	Large	Total	Small	Medium	Large	Total	Small	Medium	Large	Total
Number of grantees in category	27	27	35	89	24	33	32	89	51	60	67	178
No services provided	4	0	2	6	1	2	0	3	5	2	2	9
Percent of total grantees	15%	0%	6%	7%	4%	6%	0%	3%	10%	3%	3%	5%
Previews of instructional programs	10	21	23	54	7	23	25	55	17	44	48	109
Percent of total grantees	37%	78%	66%	61%	29%	70%	78%	62%	33%	73%	72%	61%
Advance schedules of general audience programs	21	24	31	76	17	23	28	68	38	47	59	144
Percent of total grantees	78%	89%	89%	85%	71%	70%	88%	76%	75%	78%	88%	81%
Advance schedules of instructional programs	16	20	26	62	14	21	28	63	30	41	54	125
Percent of total grantees	59%	74%	74%	70%	58%	64%	88%	71%	59%	68%	81%	70%
Interactive distance education	6	9	14	29	11	16	22	49	17	25	36	78
Percent of total grantees	22%	33%	40%	33%	46%	48%	69%	55%	33%	42%	54%	44%
Tape lending library	10	8	17	35	9	11	12	32	19	19	29	67
Percent of total grantees	37%	30%	49%	39%	38%	33%	38%	36%	37%	32%	43%	38%
Tape dubbing	9	15	22	46	15	13	17	45	24	28	39	91
Percent of total grantees	33%	56%	63%	52%	63%	39%	53%	51%	47%	47%	58%	51%
Electronic access to curriculum guides	3	8	16	27	4	12	14	30	7	20	30	57
Percent of total grantees	11%	30%	46%	30%	17%	36%	44%	34%	14%	33%	45%	32%
Teacher and/or student awards programs	6	16	20	42	3	9	11	23	9	25	31	65
Percent of total grantees	22%	59%	57%	47%	13%	27%	34%	26%	18%	42%	46%	37%
Daytime block feeds of instructional programs	10	9	15	34	6	15	20	41	16	24	35	75
Percent of total grantees	37%	33%	43%	38%	25%	45%	63%	46%	31%	40%	52%	42%
Overnight feeds of instructional programs	4	11	20	35	3	10	17	30	7	21	37	65
Percent of total grantees	15%	41%	57%	39%	13%	30%	53%	34%	14%	35%	55%	37%
Other Services	6	11	12	29	0	10	10	20	6	21	22	49
Percent of total grantees	22%	41%	34%	33%	0%	30%	31%	22%	12%	35%	33%	28%

Note: Operating budget size is defined as follows: Small: Less than \$2.5 million. Medium: \$2.5 to \$6.0 million. Large: Over \$6.0 million.

Chart IV
Highlights of Public Television Educational Activities from the Station Activities Survey
Grantees Offering Instructional Programming to Schools
By License Type and Budget Size

Operating Budget Size	Community Licensees				Institutional Licensees				All Licensees			
	Small	Medium	Large	Total	Small	Medium	Large	Total	Small	Medium	Large	Total
Number of grantees in category	27	27	35	89	24	33	32	89	51	60	67	178
Services provided in Fiscal Year 1996:												
PTV, The Ready to Learn Service on PBS	5	12	19	36	3	9	12	24	8	21	31	60
Percent of total grantees	19%	44%	54%	40%	13%	27%	38%	27%	16%	35%	46%	34%
Other ready to learn services	12	16	24	52	9	10	18	37	21	26	42	89
Percent of total grantees	44%	59%	69%	58%	38%	30%	56%	42%	41%	43%	63%	50%
PBS Mathline	8	10	16	34	3	16	17	36	11	26	33	70
Percent of total grantees	30%	37%	46%	38%	13%	48%	53%	40%	22%	43%	49%	39%
PBS Online	5	6	15	26	4	11	15	30	9	17	30	56
Percent of total grantees	19%	22%	43%	29%	17%	33%	47%	34%	18%	28%	45%	31%
Other computer on-line educational services	5	8	22	35	9	12	18	39	14	20	40	74
Percent of total grantees	19%	30%	63%	39%	38%	36%	56%	44%	27%	33%	60%	42%
Utilization support for teachers using technology	10	16	27	53	8	19	22	49	18	35	49	102
Percent of total grantees	37%	59%	77%	60%	33%	58%	69%	55%	35%	58%	73%	57%
Services planned for Fiscal Year 1997 or 1998:												
PTV, The Ready to Learn Service on PBS	10	9	7	26	6	6	6	18	16	15	13	44
Percent of total grantees	37%	33%	20%	29%	25%	18%	19%	20%	31%	25%	19%	25%
Other ready to learn services	5	3	2	10	2	2	1	5	7	5	3	15
Percent of total grantees	19%	11%	6%	11%	8%	6%	3%	6%	14%	8%	4%	8%
PBS Mathline	4	3	7	14	0	5	3	8	4	8	10	22
Percent of total grantees	15%	11%	20%	16%	0%	15%	9%	9%	8%	13%	15%	12%
PBS Online	9	6	2	17	3	5	0	8	12	11	2	25
Percent of total grantees	33%	22%	6%	19%	13%	15%	0%	9%	24%	18%	3%	14%
Other computer on-line educational services	10	5	3	18	4	7	2	13	14	12	5	31
Percent of total grantees	37%	19%	9%	20%	17%	21%	6%	15%	27%	20%	7%	17%
Utilization support for teachers using technology	5	2	0	7	2	8	1	11	7	10	1	18
Percent of total grantees	19%	7%	0%	8%	8%	24%	3%	12%	14%	17%	1%	10%

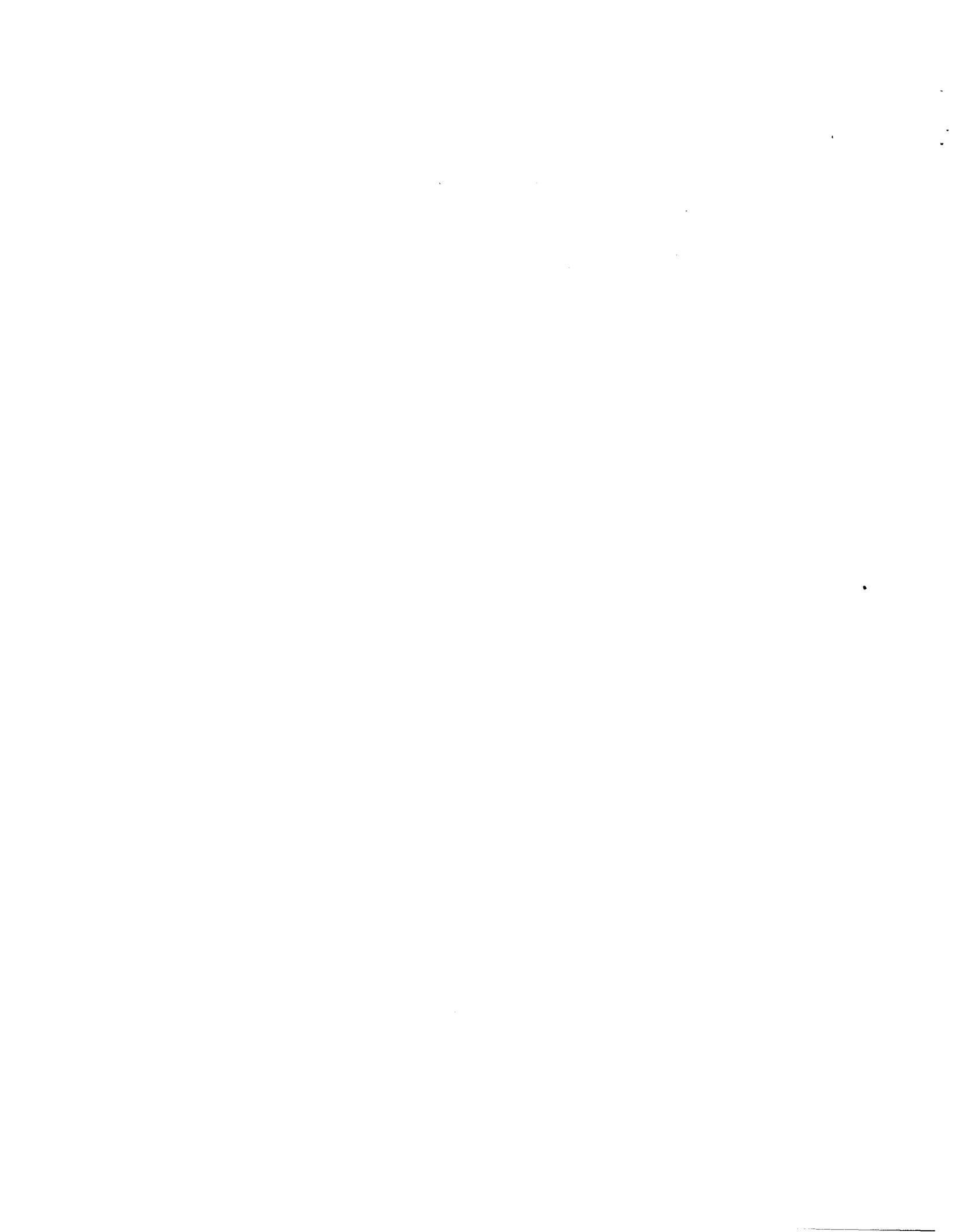
Note: Operating budget size is defined as follows: Small: Less than \$2.5 million. Medium: \$2.5 to \$6.0 million. Large: Over \$6.0 million.

Chart V
Highlights of Public Television Educational Activities from the Station Activities Survey
1995-96 Academic Year
Grantees Offering General Equivalency Degree (G.E.D.) Programs
By License Type and Budget Size

Operating Budget Size	Community Licensees				Institutional Licensees				All Licensees			
	Small	Medium	Large	Total	Small	Medium	Large	Total	Small	Medium	Large	Total
Number of grantees in category	27	27	35	89	24	33	32	89	51	60	67	178
Number of grantees offering G.E.D. program	14	18	17	49	8	14	22	44	22	32	39	93
Percent of total grantees	52%	67%	49%	55%	33%	42%	69%	49%	43%	53%	58%	52%
Median enrollment in G.E.D. program	155	95	448	200	41	85	650	176	100	91	500	200
Total enrollment in G.E.D. program	3,325	6,875	8,294	18,494	308	3,627	28,432	32,367	3,633	10,502	36,726	50,861

Median and total enrollments exclude data for 23 grantees that offered G.E.D. programs but were unable to provide enrollment figures.

Note: Operating budget size is defined as follows: Small: Less than \$2.5 million. Medium: \$2.5 to \$6.0 million. Large: Over \$6.0 million.





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What's On TV?

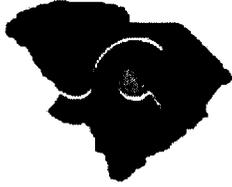
<p>LOCAL LINKS</p> <p><u>The Ideas Network</u></p> <ul style="list-style-type: none"> ● Program Notes ● Receive Notes by EMail ● Station Schedules <p><u>The NPR News and Classical Music Net</u></p> <ul style="list-style-type: none"> ● Classical Listings ● Folk Listings ● Station Schedules <p><u>WPR Produced National Programs</u></p> <ul style="list-style-type: none"> ● Michael Feldman's Whad'Ya Know? ● Zorba Paster On Your Health ● To The Best Of Our Knowledge ● Calling All Pets <p><u>WPR Produced Wisconsin Programs</u></p> <ul style="list-style-type: none"> ● Chapter A Day ● Higher Ground with Jonathan Overby ● Hotel Milwaukee ● Simply Folk ● Sunday Afternoon Live from the Elvehjem <p><u>About WPR</u></p> <ul style="list-style-type: none"> ● Mail and Email Us ● Contact Us By Phone ● Career Opportunities <p><u>The Audio Store</u>®</p>	<p>WISCONSIN PUBLIC RADIO</p> <p>Search Our WebSite Check Our Program Index</p> <p><u>Impeachment Trial coverage prompts "Chapter A Day" Change</u></p> <div style="border: 1px solid black; padding: 5px;">  <p>***** WPR continues coverage of Senate Impeachment Trial on Saturday, January 23rd and Monday, January 25th.</p> </div> <p><u>1998 Wisconsin Family Read-In Booklist is available here!</u></p> <div style="text-align: center;">  </div> <p><u>WISCONSIN PUBLIC RADIO</u>  <u>WPR Announces 1999 Neale/Silva Young Artists' Competition</u></p> <div style="border: 1px solid black; padding: 5px;"> <p><u>Metropolitan Opera returns to Music Service starting November 28th</u></p>  </div>	<p>NATIONAL LINKS</p> <p><u>Other Programs Carried By WPR</u></p> <ul style="list-style-type: none"> ● A Prairie Home Companion ● All Things Considered ● All Things Considered - Weekends ● As It Happens ● Car Talk ● Family Talk with Sylvia Rimm ● The Metropolitan Opera ● Morning Edition ● The People's Pharmacy ● Pipedreams ● Riders' Radio Theater ● Schickele Mix ● Sound Money ● Talk of the Nation ● Talk of the Nation - Science Friday ● Tent Show Radio ● Weekend Edition - Saturday ● Weekend Edition - Sunday ● WestCoast Live! <div style="text-align: center;">  <p>National Public Radio</p>  <p>Public Radio International</p> <p><u>Related Web Sites</u></p> </div>
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You can E-Mail comments about our programming directly to:
 The Ideas Network: Joy Cardin at Cardin@vilas.uwex.edu
 The NPR News & Classical Music Network: Bill Lutes at Lutes@vilas.uwex.edu

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South Carolina Educational Radio Network

Statewide Programs Produced by SC ERN

- HOME
- CONTACT US
- ABOUT US
- ADVERTISING
- LINKS

SCHEDULES

- WEEKLY
- MONTHLY
- SEMI-MONTHLY

SC ERN PRODUCTIONS

- STATEWIDE
- LOCAL
- NATIONAL

- SC ERN WEB SITE
- ENTERTAINMENT
- ADVERTISING
- PRIVACY POLICY
- DONATIONS

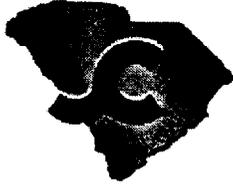
[The Bluegrass Sound](#)

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South Carolina Educational Radio Network

Programs Produced for WSCI

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- CONTACT US
- ABOUT
- PROGRAMS
- LINKS

SCHEDULES

- JANUARY
- FEBRUARY

SC ERN PRODUCTIONS

- STATEWIDE
- LOCAL
- REGIONAL

- SCERN WEB SITE
- EXTENSIONMENT
- SCERN FACTS
- VIRTUAL TOUR
- SCERN HISTORY
- RADIO FOR BLIND

- | | |
|------------------------------|---------------------------|
| <u>Blues in the Night</u> | <u>Roots Music Karamu</u> |
| <u>Conversations</u> | <u>South to Louisiana</u> |
| <u>Erwin Music</u> | <u>Swingtime</u> |
| <u>International By-line</u> | <u>Vintage Country</u> |
| <u>The Kitchen Sink</u> | <u>Who Do You Know?</u> |
| <u>La Noche Latina</u> | |

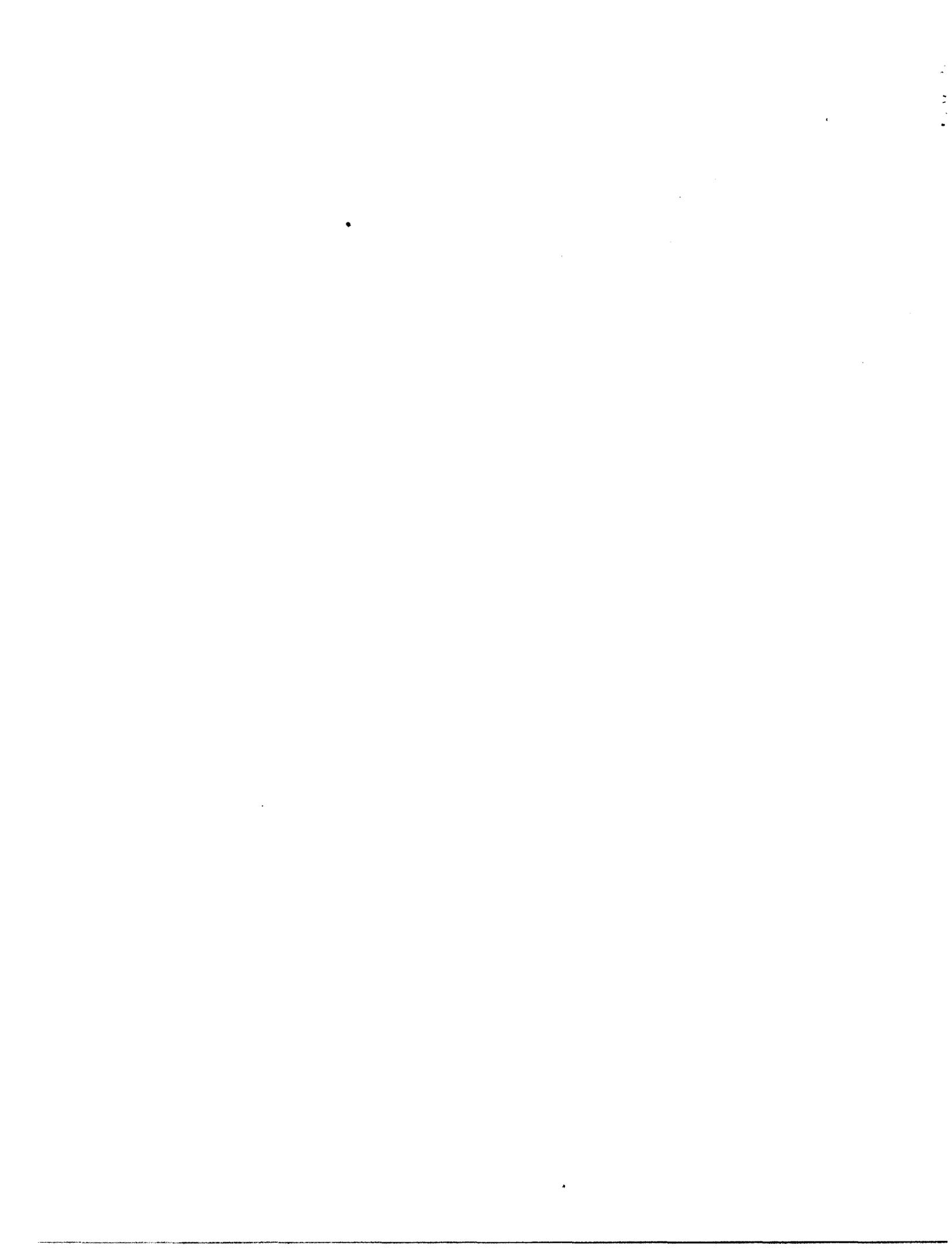


EXHIBIT 4
JOINT COMMENTS OF NPR, APTS AND CPB

FM TRANSLATORS LICENSED TO CPB GRANTEES IN EACH STATE

<u>State</u>	<u>Number of FM Translators licensed to CPB Grantees</u>
Utah	182
Oregon	113
California	105
Colorado	90
Alaska	77
New Mexico	66
New York	59
Idaho	54
Washington	47
South Dakota	45
Pennsylvania	42
Nevada	40
Wyoming	39
North Carolina	37
Montana	36
Arizona	33
Kansas	28
Nebraska	22
North Dakota	22
Virginia	22
Oklahoma	19
Texas	18
Georgia	16
Iowa	16
Kentucky	14
West Virginia	14
Hawaii	13
Minnesota	13
New Jersey	12
Connecticut	11
Ohio	11
Maine	10
Michigan	10
Florida	9
Wisconsin	9
Arkansas	6
Illinois	6

<u>State</u>	<u>Number of FM Translators licensed to CPB Grantees</u>
Missouri	6
New Hampshire	4
Vermont	4
Indiana	3
Mississippi	3
Louisiana	2
Massachusetts	2
Rhode Island	1
South Carolina	1
Tennessee	1



**EXHIBIT 5
JOINT COMMENTS OF NPR, APTS AND CPB**

Memorandum

To: Doug Weiss
 From: Jerry Ostertag
 Date: September 18, 1998
 Subject: Analysis of Impact of Elimination of Translators

Attached is a list of all noncommercial transmitters and translators in the United States, with the exceptions of American Samoa, Guam, and the Virgin Islands, for which data is not yet available. I have analyzed these to determine the potential affect of the loss of all translators following conversion of transmitters to digital capability. For this purpose only CPB-qualified stations were considered. Here are the total populations:

	Total Non-commercial	CPB-qualified
Transmitters	363	357 (inc. AS, GU, VI)
Transmitters in this analysis	354	354 (exc. AS, GU, VI)
Translators	921	921 (exc. AS, GU, VI)
Translators in this analysis	921	921 (exc. AS, GU, VI)
Licensees		176 (inc. AS, GU, VI)

Both total and exclusive unduplicated populations are available for each transmitter and translator in the contiguous U.S. Population figures used are from the 1990 U.S. Census, and reflect the Grade B contour of each transmitter or translator. Translator populations are referred to by the FCC as secondary. In Alaska, Hawaii, and Puerto Rico, unduplicated populations were not available, and this applied to a total of 9 transmitters and 99 translators.

Total population served by all 354 full-power CPB-qualified stations	564,565,549
Unduplicated population served by all 354 stations	71,508,045
Total population served by all 921 translators	12,085,306
Unduplicated secondary population served by all 921 translators	2,551,714

This last figure is the total minimum number of U.S. citizens who would lose all over-the-air access to public television if all translators were lost.

Of the secondary population served by all 921 translators of 12,085,306, populations served by individual translators range from a low of only one to a high of 410,242.

- **Some communities of significant size are served by translators:**
 - There are 32 translators that each serve populations of 100,000 or more.
 - There are 26 translators that each serve populations of between 50,000-99,999.
 - Another 133 translators that serve populations of between 10,000-49,999.

That means only 191 translators, or 21% of the total, serve 10,815,119 people, or 89% of all people served by translators.

- **There are some surprisingly small communities served by translators:**
 - Five translators serve only one person each, according to the FCC.
 - Exactly 100 translators each serve fewer than 100 persons, and a total of 4030.
 - Another 133 serve 100-499 persons, and a total of another 37,667 people.

But these communities include populations that the FCC considers duplicated, or served by a full-power station in some form. It includes urban populations which may require a translator to put an adequate signal into a shadowed area or to overcome extreme multipath.

- **More important are the areas with unduplicated populations, the 2,551,714 people who will lose all access to a public television signal if translators are lost.**

- There are two translators which serve unduplicated populations of 100,000 or more, and a total of 229,785. They are Bakersfield and Wichita Falls.
- There are another nine translators serving unduplicated populations of 50,000-99,999, and a total of 573,627 people. They are: Mansfield, OH, Hattiesburg, MS, Lawton, OK, Santa Barbara, CA, Jamestown, NY, Sterling, IL, Casper, WY, Flagstaff, AZ, and Williamsport, PA.

These largest eleven have nothing apparent in common. No licensee operates more than one. All are in different states.

- There are another 49 translators which serve unduplicated populations of 10,000-49,999, for a total of an additional 1,121,588 people. Of these there are some common licensees, and when considered as a group with the eleven which serve even larger audiences, some patterns begin to emerge.
- The sixty largest translators serve a total of 1,925,000 unduplicated people, or more than 75% of the total unduplicated population served by translators. These populations are scattered among 23 states. The largest populations are in eight states:

CA	307,233	OH	155,009
OK	180,647	NM	149,695
AZ	174,642	WY	103,673
NY	158,387	TX	103,563

These eight states total 1,332,849 people, or 53% of those who would lose their public television service due to the loss of translators.

- The sixty largest translator populations are served by 41 licensees, however *only fifteen licensees in eleven states account for 65%, or 1,258,723 people, of the unduplicated population that would lose public television without translators.* They are:

	ST	Licensee	Affiliation	Unduplicated Population
1	OK	Oklahoma Educational Television Authority	KETA/KWET	180,647
2	AZ	Arizona State University	KAET	133,388
3	CA	Valley Public Television, Inc.	KVIE	126,222
4	TX	Wichita Falls Educ Translator	KERA	103,563
5	CA	Community Television of Southern California	KCET	94,345
6	OH	Ohio State University	WOSU	79,421
7	MS	Mississippi Authority for Educational Telev.	WMAH	70,400
8	NY	WSKG Public Telecommunications Council	WSKG	64,526
9	IA	Iowa Public Broadcasting Board	KIIN	62,965
10	NY	Western New York Public Broadcasting Assn.	WNED	60,855
11	IL	Black Hawk College	WQPT	59,930
12	NM	New Mexico State University	KRWG	59,167
13	WY	Casper Community College District	KCWC	58,916
14	PA	Bastet Broadcasting, Inc.	WVIA	52,267
15	NM	Regents of the University of New Mexico	KNME	52,111
				1,258,723

Of these fifteen, seven are either institutional or school board licensees.

- On the smaller side, there are 79 translators that serve fewer than 100 people, and a total of 2,756. In fact, 19 of these translators serve unduplicated populations in single digits.
- **How many translators are used to fill in holes in a primary transmitter's service area?**

To date CPB is unable to locate data that enables us to determine definitively whether a translator is used to fill in areas of poor or no reception within a transmitter's Grade B contour, or is used to extend a transmitter's reach.

However, some inferences can be made from the difference between the total population served by a translator and the unduplicated population.

There are 323 translators which serve 7,337,854 people, *yet serve no listed unduplicated population.* Bearing in mind that the technical FCC definition of duplicated population may not match the reality of local conditions for reception, one can presume that these translators would not have been built without a genuine need. *This suggests that well over half— 61% —of people served by translators are in areas that are probably considered service needed to fill in existing holes in analog transmission coverage.*

- While difficult to quantify, the communities served by these 323 translators tend to be in areas where natural topography plays a significant role in reception of a terrestrial signal, including Utah, Oregon, Colorado, California, North Carolina, and Idaho. In fact, these six states have 191— 60% —of those translators which have no unduplicated population as defined by the FCC. They serve 2,999,932 people, or 25% of all who are served by translators, who technically can access over-the-air public television from another source.
- In seven of the most populous states—New York, New Jersey, Pennsylvania, Ohio, Indiana, Georgia and Florida—with only 39 translators another 2,684,849 people, or 22% of all who are served by translators, are in the same situation.

Which stations would be left with holes in their coverage areas and lose the most viewers? There are 21 grantees who would lose 100,000 or more, and total 5,862,134 people, or almost half of the total population served by translators. These stations have anywhere from one to 49 translators, and a total of 177. Given the size of the populations served, this appears to be a significant strategy at these 21 stations even if only one translator is needed to accomplish it:

Grantee	Secondary Population	Translators
KRMA, Denver	503,872	17
KBDI, Boulder	454,321	4
North Carolina Network	424,425	21
WNEO/WEAO, Akron	410,242	1
New Jersey Network	387,496	5
Georgia Network	369,230	7
WCNY, Syracuse	361,576	3
WBGU, Bowling Green OH	326,461	1
KCET, Los Angeles	318,502	5
West Virginia Network	302,901	4
Oregon Public Broadcasting	285,297	20
KUED/KULC, Salt Lake City	284,322	49
Maine Public Broadcasting	242,612	2
WVIA, Scranton	202,429	5
WMHT/WMHQ, Schenectady	186,767	3
Idaho Network	171,193	12
KPBS, San Diego	159,749	2
WITF, Harrisburg	139,057	2
WVPT, Harrisonburg	118,502	1
WCVE et al, Richmond	107,200	8
KSPS, Spokane	105,980	5
21	5,862,134	177

Doug Weiss
September 18, 1998
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In addition there are several more stations which appear to have employed this strategy and show significant populations aggregated through aggressive use of translators:

Grantee	Secondary Population	Translators
KSYS, Medford	97,582	15
KBYU, Provo	83,283	21
KIXE, Redding	24,071	10
3	204,936	46

In summary:

- It appears conservative to assume that if all translators were lost following digital conversion, at minimum 2,551,715 people in the contiguous U.S. would lose all over-the-air public television service.
- In addition, it is likely that some undetermined percentage of the remaining 9,533,592 people served by translators would also be unable to receive any over-the-air public television service, and perhaps as many as the 7,337,854 who appear to be in shadow areas of a primary transmitter.



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

To: The Commission

JOINT COMMENTS OF NONCOMMERCIAL
EDUCATIONAL BROADCAST LICENSEES
ON SELECTION PROCESS FOR COMPETING APPLICATIONS

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Alaska Public Telecommunications, Inc. ("APTI"), Arizona Board of Regents for Benefit of the University of Arizona ("Arizona), Arkansas Educational Television Commission ("AETC"), Board of Regents of the University of Wisconsin System ("UWS"), Boise State University ("BSU"), Central Michigan University ("CMU"), Greater Washington Educational Telecommunications Authority ("GWETA"), Iowa Public Broadcasting Board ("IPPB"), Iowa State University of Science and Technology, Kent State University ("KSU"), Nashville Public Radio, The Ohio State University ("OSU"), Ohio University ("OU"), Public Broadcasting Council of Central New York ("WCNY"), Regents of the University of New Mexico ("UNM") and the Board of Education of the City of Albuquerque, Spring Hill College ("WHIL"), South Carolina Educational Television Commission ("SCETV"), St. Louis Regional Educational and Public Television Commission ("KETC"), State of Wisconsin - Educational Communications Board ("WECB"), University of Minnesota ("U of M"), Virginia Tech Foundation ("VTF"),



WAMC, Washington State University ("WSU"), and WSKG Public Telecommunications Council ("WSKG") (collectively, the "NCE Broadcasters"), by their counsel, submit these joint comments in response to the Commission's *Further Notice of Proposed Rulemaking* in MM Docket No. 95-31 ("*NPRM*"), which sought additional comment on the process for choosing among competing applicants for noncommercial educational (NCE) broadcast stations.

The NCE Broadcasters agree with and support the thrust of the comments of National Public Radio ("NPR"), America's Public Television Stations ("APTS") and the Corporation for Public Broadcasting ("CPB") in this proceeding, but comment separately based on their past collective experience with mutually exclusive ("MXed") NCE proceedings. Moreover, the NCE Broadcasters felt obliged to comment directly in this proceeding because of their vital interest in it, given its impact on their future -- and the future of public broadcasting. The NCE Broadcasters support a point system that would sustain the bedrock principles that underlie the reservation of channels for noncommercial educational use -- localism (including points for local applicants, local funding, local directors and officers, local educational presence and local representativeness), diversity, and spectrum efficiency. These factors are not new -- analysis of the Commission's past hearing decisions on NCE comparative cases demonstrates that these types of factors have been decisional in the past when the Commission decided among competing NCE applicants. What is new is the application of these factors in a manner and using a process allowing efficient evaluation by the FCC.

Introduction and Summary

The NCE Broadcasters are public and private universities and university systems, non-profit community licensees, statewide public broadcast networks or governmental educational



telecommunications entities. The NCE Broadcasters are experienced licensees of public broadcasting stations providing noncommercial educational broadcast radio and television services. The NCE Broadcasters include some of the nation's oldest educational broadcasters, who pioneered AM educational radio, FM educational radio, and educational TV. Some of these parties have provided such services to the public for over 75 years in the case of radio and 45 years in the case of TV. Some of the NCE Broadcasters own only one NCE station; others operate multi-station NCE networks that blanket entire states or regions. Collectively, the NCE Broadcasters operate over 108 NCE radio and 38 NCE television stations across the country. And, collectively, the NCE Broadcasters account for 23 MXed radio applications and 10 MXed TV applications that will be decided by the outcome of this proceeding. Many of the NCE Broadcasters have participated repeatedly in comments and reply comment in the earlier stages of this proceeding, in response to rulemaking notices in GC Docket No. 92-52 in 1991 and MM Docket No. 95-31 in 1995. Thus, the NCE Broadcasters believe that their assortment of sizes and ownership structures, their vast experience and their long commitment to NCE broadcasting and to this particular proceeding give these joint comments weight.

ARGUMENT

A. The Commission Should Adopt a Point System to Decide Among Competing NCE Applicants

The NCE Broadcasters believe that use of a point system to decide among NCE applicants would best serve the public interest while preserving the special mission and structure of noncommercial educational broadcasting. After careful consideration of the hearing and



lottery alternatives set forth in the NPRM, the NCE Broadcasters believe that both of those approaches should be rejected in favor of a properly crafted point system.

Traditional Comparative Hearings. For many decades, the Commission used traditional comparative hearings to decide among MXed broadcast applicants, including MXed NCE broadcast applicants, even though different decisional criteria were applied to NCE stations.^{1/} While many of the NCE Broadcasters had previously supported such hearings as the best way to decide among NCE applicants, the NCE Broadcasters believe that current circumstances require use of a different decisional system, albeit one that promotes the underlying assumption that not all qualified applicants are equally preferred for channels, especially those reserved for NCE use.

First, for the obvious reasons cited in the NPRM (delays, costs on applicants and burdens on staff resources), comparative hearings have fallen into disfavor. Second, while in the past, NCE hearings were actually uncommon,^{2/} the protracted length of this proceeding (and its precursor in GC Docket 92-52) and the 1995 processing freeze on MXed applications have resulted in a large backlog of MXed applications.^{3/} Resolution of these applications would expedite new service, including service to many areas without any public broadcasting service. Third, the current state of indecision on the criteria for deciding among NCE applicants is

^{1/} For over twenty-five years -- from the seminal *New York University* case in 1969 until the processing freeze in 1995, the FCC decided mutually exclusive NCE proceedings by comparative hearing. As shown by prior comments in this proceeding, the majority of MXed NCE applications did not result in FCC decisions -- most cases settled.

^{2/} As shown in the comments of NCE Licensees in GC Docket 92-52 in 1992, most NCE comparative proceedings resulted in settlements before hearings. We incorporate by reference those comments and attached appendix of NCE cases.

^{3/} See footnote 11 of the NPRM.

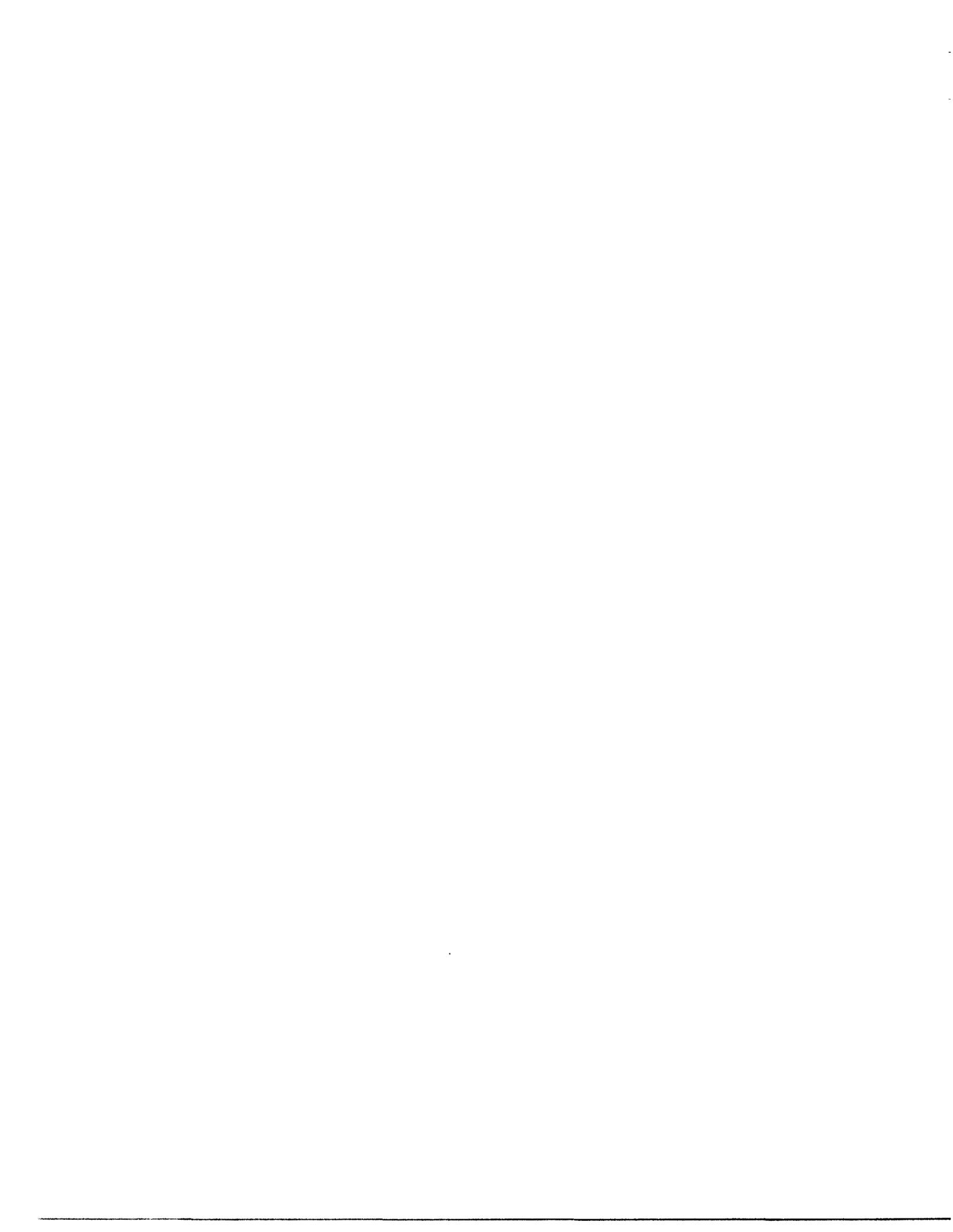


creating an huge influx of unqualified or marginally qualified NCE applicants. The NCE Broadcasters believe that a large portion of these applications are by speculators (some of whom appear to be backed by commercial radio enterprises) or other unexperienced entrants that may not be able to effectuate their proposals, not traditional NCE applicants. This would explain the huge increase in the number of NCE applications filed in the past few years.^{4/}

Lotteries. The NCE Broadcasters strongly believe that lotteries should not be used to decide among NCE applicants.

First, the "ownership" structure of NCE licensees does not lend itself to easy analysis in the context of "diversification of ownership," as set out in the Commission's current rule-making authority. The locus of "control" necessary to determine *de jure* and *de facto* control for purposes of applying the lottery statute is numbingly complicated because NCE licensees come in all shapes and forms: state-owned broadcasters (who may have directors appointed by a governor or the state legislature), public universities, private universities, school boards elected locally, non-profit organizations with self-perpetuating governing boards, and non-profit organizations with governing boards elected by their membership or by other constituent organizations. The NCE Broadcasters do not believe that the Commission can fairly apply a "diversification" preference for a lottery for Mxed NCE applications without inadvertently disadvantaging NCE ownership structures that have proved useful models for successful, long-term NCE broadcast station operation in the past. Moreover, the NCE Broadcasters cannot conceive of a reasonable way to prevent manipulation of "control" by an unscrupulous applicant

^{4/} *Id.*



seeking to obtain a statutory preference that does not involve intrusive individual factual analysis by Commission staff.

Second, the Commission's current lottery authority, as applied, also suffers constitutional infirmities given the U.S. Supreme Court decision in *Adarand*. The Commission's interest in expediting new NCE service to the public (including first NCE service to many areas) by resolution of the backlog of NCE MXed cases (and the growing number of MXed applications) would not be served by postponement pending completion of FCC studies on minority preferences and perhaps a protracted court challenge to the lottery standard. The Commission must keep in mind that proceedings on the criteria for deciding among NCE MXed applications has already been seven (7) years in the making, as initial comments were filed in 1992 in GC Docket 92-52.

Third, the very nature of "random selection" in a lottery is antithetical to the history and mission of NCE broadcasting. It does not comport with Congress' and the Commission's historic recognition of the special nature of NCE broadcasting, and the scarcity of frequencies reserved for NCE use. Moreover, lotteries -- even weighted lotteries -- would strongly disfavor public broadcasters like the NCE Broadcasters, who historically operate in states or regions and apply for new stations only within those areas (and who typically do not compete with each other over frequencies), in favor of NCE broadcasters that use a "scatter shot" approach of filing multiple applications on a nationwide basis in the hopes that some of the applications would be granted. Lotteries are thus incompatible with the manner in which NCE broadcasting has developed nationwide. Any lottery system would be ripe for abuse and speculation.



The information supplied in footnote 11 of the NPRM and further analysis of data on MXed NCE applications on the FCC's website supports the NCE Broadcasters concern about abuse. In fact, the NCE Broadcasters suggest that part of the reason for the dramatic increase in NCE applications in 1997 and 1998 has been speculation that the FCC would adopt some sort of lottery system for deciding among MXed NCE applicants. Analysis of data on the FCC's website on MXED NCE radio applications demonstrates that over 400 of the competing applications involve largely 15-20 radio applicants who have overfiled each other in virtually every state.^{5/} The majority of these applications have been filed since the 1995 "freeze" on processing MXed NCE applications.

Finally, and most importantly, the NCE Broadcasters believe that not all applicants that "qualify" as NCE licensees are equally preferable licensees for a particular frequency in a particular area -- there are gradations among applicants. The NCE Broadcasters believe that "serving the public interest" in the NCE context means that the Commission must develop a system that chooses the applicant likely to provide the best NCE service to the community. The point system set forth below supplies such a system.

B. Point System.

Where there are mutually-exclusive applications by noncommercial educational broadcasters for reserved NCE frequencies, the NCE Broadcasters strongly support a point system. The point system should seek to choose the applicant that best serves the public interest goals of localism, diversity of viewpoints and spectrum efficiency, as follows:

^{5/} See <http://www.fcc.gov/mmb/asd/welcome.html/NEWSBOX>

1. Localism

* **Local Applicant Credit.** A point should be awarded to applicants with a Local headquarters, including a Local headquarters for the applicant's Parent(s). "Local" shall be defined as (a) located within 100 miles of the proposed facilities or located within the same state or (b) within the same state or in a bordering community if the proposed facilities are part of a State-Wide Plan, or (c) located within the same state as part of an established state or regional network. A "State-Wide Plan" should be defined as an existing education plan of a state, municipality, state governmental agency, or public educational institution. A "Parent" of an applicant, in the noncommercial context, should be defined as an entity that selects or approves a majority of the directors and/or governing board members of the applicant or otherwise controls the applicant.

* **Local Directors and Officers Credit.** A point should be awarded to applicants (a) for which at least seventy-five percent (75%) of the officers or director (or members of the governing board) are Local, or (b) which are states, municipalities, government agencies, or public educational institutions. The directors and officers of a state-owned entity are inherently local.

* **Local Funding Credit.** A point should be awarded to applicants for which at least fifty percent (50%) of the expected funding for the station is from Local or public sources, which may include federal grant funding from Public Telecommunications Facilities Program of NTIA, Department of Commerce.

* **Local Educational Presence Credit.** A point should be awarded to established Local educational organizations which apply for a license. An "educational" organization should be defined by FCC rules and precedent an applicant eligibility. An "established" organization shall be an organization that has existed continuously for at least two years prior to filing of an application.

* **Representativeness Credit.** A point will be awarded to applicants (a) with board members who are leaders (i.e., officers or directors) of at least five different Local elements (e.g., businesses, civic groups, professions, religious groups, schools, government) or (b) which are states, municipalities, government agencies or public educational institutions or other educational institutions. With respect to the first criteria, one director cannot be considered to be a representative of more than one Local element.

2. Diversity of Ownership Credit.

The FCC should award credits as follows:

- * 2 points for applicants which own 5 or fewer stations in the same broadcast service.



- * 2 points for applicants which are states, municipalities, government agencies or public educational institutions. These entities have an mandate to serve the diverse interests and constituencies of their jurisdictions and, therefore, qualify for diversity on a "per se" basis.
- * 1 point for applicants which own 10 or fewer stations in the same broadcast service.

The FCC should award demerits as follows:

- * minus 2 points for applicants which own more than 25 stations in the same service.
 - * minus 3 points for applicants which own more than 50 stations in the same service.
3. Spectrum Efficiency - Fair Distribution of Service Credits.

The FCC should award credits for:

- * 5 points for the first full-time NCE aural or first full-time NCE video service received by a significant population.
- * 2 points for the second full-time NCE aural or video service received by a significant population.
- * 1 point for the third full-time NCE aural or video service received by a significant population.
- * Technical Differences Credit. As suggested by the FCC, the FCC should award 1 point to an applicant proposing to serve 10 percent or greater area (not including bodies of water) and population than competing applications.
- * Facilities Improvement Credit. The FCC should award a point to an applicant proposing a major modification to its facilities in order to improve the technical service to its service area. For instance, an applicant may seek to move to an adjacent frequency in order to reduce interference with a same-channel station, only to have another party with no ties to the community file a mutually-exclusive application. The applicant with a history of service to the community who is making an effort to improve technical service should receive a point in the proceeding.



C. **Discussion of Proposed Point System and Rationale for Rejecting Alternatives**

The NCE Broadcasters support in full each aspect of the point system described above.

The point system, which is modeled on the successful point system used for Instructional Television Fixed Service (ITFS) MXed applications, would select the "best qualified" applicant.

"Local" and "Diversity" Should be Separate Concepts. The NCE Broadcasters believe that the FCC's proposal for local diversity credit does not adequately reflect the current circumstances of noncommercial broadcasting. For the past decade or so, public broadcasters seeking to bring service to unserved areas (or new service to an area already served by public broadcasting) have expanded regionally. In contrast, based upon review and analysis of the pending MXed applications referenced in the NPRM, other NCE entities (i.e, non-public broadcasters that qualify as NCE licensees) have filed applications on a nation-wide basis.^{6/} Thus, the FCC's proposal for "local diversity credit" could harm both localism and diversity. It favors non-local applicants which could own hundreds of stations across the country, over a local applicant which, for example, seeks to extend its signal to an outlying rural area, which it already knows and serves marginally with its signal (and which area has requested that the local applicant provide service there) if the proposed facilities have a small overlap with the applicant's current station.

Moreover, many of the NCE Broadcasters stations have developed "dual" program services (such as a News and Information Service and a Classical Music Service) in the same

^{6/} See Exhibit A, which lists noncommercial applicants who have filed 10 or more applications. This information was taken from data on the FCC's website referenced in Footnote 5, *supra*.



geographic area. Stations seeking to provide these dual services -- even state-wide broadcasters with a governmental mandate to serve the state's citizens, or local university broadcasters seeking to provide dual services to the university areas, or an area where the university operates an extension center -- would be disadvantaged under the local diversity credit. Thus, the NCE Broadcasters believe that more a more detailed point system on separate "localism" and "diversity" criteria is necessary to ensure appropriate use of the reserved spectrum. The Commission should also address the issue of "national" ownership diversity among competing applicants, given the trend of national filers seeking NCE use of reserved channels.

Fair Distribution of Service -- Section 307(b). The NCE Broadcasters support the Section 307(b) concept proposed by the Commission, modified as set forth above, to favor applications proposing first, second and third NCE aural or video service to a geographic area. There is ample case law on preferences for Section 307(b) to permit FCC staff to apply this criterion in the point system based on a standard areas and populations analysis.

However, the NCE Broadcasters also believe that the Commission should not state this criterion in terms of "received in the community," but in terms of "geographic population served" in accordance with standard engineering areas and populations analysis. The Commission should not credit "first local transmission service" under Section 307(b) in any point system. Local transmission service is an important FCC goal, however, it is less important in the NCE context, than in the commercial radio context.^{2/} Given the overall number of radio and TV broadcast stations, all but the smallest of communities have first local transmission service.

^{2/} See *New York University*, 10 RR2d 215 (1969).



Moreover, based upon a review of the MXed NCE applicants on the FCC's website, the NCE Broadcasters discern that there has been an increasing trend among NCE applicant to select a minuscule "community of license" (sometimes of 500 persons or less) in hopes of gaining a decisive Section 307(b) credit over an applicant proposing service to a larger community or area that needs first (or additional) public radio service. The NCE Broadcasters believe that the applicants have no intention of providing "local service" to those minuscule communities.

Documentation. The Commission asked for comment on how best to document how NCE applicants would meet the proposed criteria to avoid "feigning." For the most part, to deter abuse, the FCC needs only to enforce current requirements on applicant qualifications swiftly and surely when deficiencies are pointed out. Based on their experience, the NCE Broadcasters believe that legitimate petitions to deny applications (which, by statute, the Commission must consider) are necessary to winnow out abusive and speculative applications that do not comply with existing application requirements and Commission rules.

The NCE Broadcasters believe that, after adoption of the rules in this proceeding, the Commission should open a settlement window for competing NCE broadcast applications for reserved channels as well as opportunities to file petitions to deny against unqualified applicants. The NCE Broadcasters believe that, once some certainty is established about how the recipient of the frequency is selected, a number of pending MXed application proceedings will be settled expeditiously, which will eliminate the necessity to devote staff resources to the "point system" determination.

However, the proposed point system would also require added measures of documentation. Stations must have the ability to analyze and challenge the proposals of other



applicants. Therefore, the NCE Broadcasters support the documentation proposed in the comments of NPR and APTS, supplemented with its comments described below.

Any documentation supporting certifications in applications should be made available to competing applicants after the mutual exclusivity among the applicants is discovered. This documentation should include:

- * For Local Applicant Credit: Governing documents, including articles of incorporation, bylaws, location of headquarters and State-Wide Plans.
- * For Local Directors and Officers Credit: Lists of officers, directors or governing board members with primary residences listed.
- * For Local Funding Credit: Financial documentation sufficient to demonstrate compliance with the FCC's Financial Qualifications Standards,^{§/} supplemented by either the applicants's most recent annual audited financial statement as of the time the application is filed (which cannot be more than a year old), OR, the most recent IRS Form 990 of an applicant.
- * For Local Educational Presence Credit: Documentation demonstrating the date that the applicant was "established," such as certification from the Secretary of State in which the applicant was organized.
- * For Representativeness Credit: Resumes of each of the directors or advisor board members that meet the "representativeness" test, including dates and references that can confirm that the individual serves as a representative of a Local element.
- * For Diversity Credit: List of media interests, including a chart of licenses and permits held, pending applications, interlocking directorships with other media interests.
- * General: Address of the proposed main studio location and public inspection file

These added documentation measures would not normally increase processing burdens on Commission staff, because the documentation would only become relevant if one applicant chose

^{§/} The Commission had ample case law on financial qualifications that it may use to determine if an applicant qualifies for a Local Funding Credit, if an issue is raised.



to challenge another applicant's "points." Based on the Commission's experience with the point system for ITFS applications, the NCE Broadcasters do not believe that there will be many instances involved disputes about "points" awarded, if the point system is clearly and consistently applied.

Minority Control Credit. The NCE Broadcasters do not believe that the minority control credit can properly be applied in the context of NCE Mxed proceedings. For the reasons cited above in conjunction with the discussion rejecting lotteries, any minority control criteria would suffer constitutional infirmities based on the *Adarand* decision and would subject applicants to arbitrary rules about "control" of NCE applicants. However, the NCE Broadcasters wish to point out that public broadcasters have a long history of providing programming that constitutes an expression of diversity and excellence and reaches out to underserved audiences, particularly children and minorities, in accordance with the statutory mandate of Section 396(a)(5) and (6) of the Communications Act.^{2/} The NCE Broadcasters thus believe that the Commission's interest in fostering diversity of programming is furthered when it fosters a point system that encourages public broadcasters to compete for new broadcast stations.

Tie Breakers. In the event of a tie, the NCE Broadcasters support part of the tie-breaker solutions proposed by NPR, APTS and CPB in their comments -- the license should be awarded to the applicant with the fewest pending applications for new broadcast facilities in the same service at the time the subject application is filed. The NCE Broadcasters believe that NPR and APTS's rationale supporting this tie-breaker is a valid one -- an applicant with many pending

^{2/} For example, the Joint Comments of APTS and NPR in 199_, at Footnote 11, described public broadcasting's efforts to serve minority audiences.



applications is likely to secure a license elsewhere, while the applicant with just one or two applications is likely to have determined that only these one or two frequencies will serve its purposes. However, the NCE Broadcasters do not support a lottery as the ultimate tie-breaker. For the reasons advanced above, an appropriate lottery that complies with the statutory mandate on diversification and minority preference cannot be devised. Instead, the NCE Broadcasters believe that the ultimate tie-breaker should be determined based on filing priority -- the tie should go to the "runner" -- the applicant who filed first.

Share Time. The NCE Broadcasters strongly oppose any kind of mandated time sharing arrangement for NCE broadcasters, including the suggested "negotiated" time sharing arrangement. Throughout the prior history of this proceeding (and its precursor in GC Docket 92-52), the NCE Broadcasters have been unanimously opposed to time sharing and this opposition continues unabated. None of the comments in the prior history of this proceeding (or its precursor) have supported time sharing; the Commission's continued proposal of such arrangements is therefore quite puzzling. The absence of successful long-term time sharing arrangements is "per se" evidence that such arrangements are not workable. Particularly in a climate of reduced federal and state support for public broadcasting, the concept of forced sharing time is unreasonable, as the kind of audience support necessary to ensure long term successful operation cannot be built on a part-time basis.

Holding Periods. The NCE Broadcasters believe that a properly crafted point system, that includes the "local funding criterion" proposed above to ensure effectuation of an applicant's proposal, obviates the need for a holding period. Still, the NCE Broadcaster's experience



suggests that a holding period, with appropriate exceptions, will not adversely affect NCE licensees that are committed to ensuring legitimate, long-term NCE service to an area.

CONCLUSION

For these reasons, the NCE Broadcasters support the point system described above as the best mechanism for deciding among NCE applicants for reserved NCE channels.

Respectfully submitted,

ALASKA PUBLIC
TELECOMMUNICATIONS, INC.

ARIZONA BOARD OF REGENTS FOR
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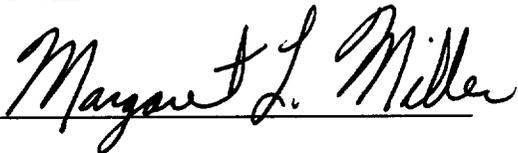
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By: 

Todd D. Gray
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Their Counsel

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January 28, 1999



EXHIBIT A



**FM Educational Mutually Exclusive Broadcast Application Groups
Applicants with Ten or More Pending Applications**

Name of Applicant	Number of Applications Filed
American Educational Broadcasting	12
American Family Association	139
Bible Broadcasting Network, Inc.	10
Broadcasting for the Challenged, Inc.	78
CSN International	28
Educational Communications of Colorado Springs	10
Educational Media Foundation	29
Family Stations, Inc.	27
Moody Bible Institute of Chicago	13
Pensacola Christian College, Inc.	11
Stockton Christian Life College	11

