

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

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

**REPLY COMMENTS OF  
CENTER FOR MEDIA EDUCATION  
CITIZENS FOR INDEPENDENT PUBLIC BROADCASTING PROJECT OF THE  
CENTER FOR SOCIAL STUDIES EDUCATION  
CIVIL RIGHTS FORUM  
COALITION FOR NONCOMMERCIAL MEDIA  
CULTURAL ENVIRONMENT MOVEMENT  
MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL**

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## SUMMARY

In these reply comments, CME, et al. maintain that the Commission should retain comparative hearings to allocate noncommercial educational (NCE) broadcast licenses on reserved spectrum. Comparative hearings ensure the selection of applicants who will best fulfill the public interest standard.

In contrast, allocating NCE licenses through either lotteries or point systems will not effectively promote the public interest. A lottery selects licensees randomly, and a point system cannot differentiate between applicants who have the same number of points but who achieve those points to different degrees. Moreover, neither lotteries nor point systems will lead to the anticipated savings in resources. Developing and enforcing a new system will be time-consuming, expensive, and will delay licensing. Thus, the Commission should retain comparative hearings and reject alternative systems that jeopardize the public interest and save few, if any, resources.

If the Commission replaces comparative hearings, it should adopt a point system that rewards applicants who foster responsiveness to local communities, offer diverse and alternative programming, and serve underserved audiences. Credits should be granted for localism, diversity of control, local diversity, minority control, fair distribution of service, and spectrum efficiency. Localism credits should be weighted heavily to encourage applicants to respond to the concerns of their communities of license. Proposals which grant credit for factors such as first to file or broadcast experience which do not advance the quality of NCE broadcasting should be rejected.

The Commission should hold comparative hearings to break ties to ensure the most qualified candidate is licensed. Alternatively, the Commission should utilize meaningful tie-breaking factors that further the public interest. The Commission should also employ holding

periods, annual certifications, and other procedures to deter speculators and to ensure broadcasters fulfill their application promises.

NCE broadcasters must remain eligible for commercial spectrum and the Commission should reserve additional spectrum for NCE use under a special processing track. A special processing track relieves the need for a system that allocates non-reserved spectrum among competing commercial and noncommercial applicants. In addition, the Commission should reject proposals for allocating commercial spectrum that force NCE applicants to participate in auctions or lotteries. Such proposals run counter to Congressional intent and public policy.

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The Center for Media Education, Citizens for Independent Public Broadcasting Project of the Center for Social Studies Education, Civil Rights Forum, Coalition for Noncommercial Media, Cultural Environment Movement, and Minority Media and Telecommunications Council (ACME, et al.) respectfully submit the following Reply Comments in response to the Commission's Further Notice of Proposed Rulemaking, Reexamination of the Comparative Standards for Noncommercial Educational Applicants, FCC 98-269, MM Docket No. 95-31 (rel. Oct. 21, 1998) (A Further Notice).

In their original filing, CME, et al. urged the Commission to retain comparative hearings to allocate NCE broadcast licenses. CME, et al. maintained that comparative hearings focus on the qualifications of the applicant, ensuring that the licensee selected will meet the public interest standard.<sup>1</sup> CME, et al. also argued that the Commission should not adopt a lottery system for

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<sup>1</sup>See 47 U.S.C. §§309(a) and 307(b).

allocating NCE licenses because lotteries will reduce the quality of service to the public and will not result in a significant savings of time or money. In addition, CME, et al. urged the Commission to adopt a point system if it decides not to retain comparative hearings. Finally, CME, et al. argued that the Commission should reserve additional spectrum for NCE use.

In this current filing, CME, et al. will respond to comments which propose mechanisms for allocating NCE licenses for reserved and unreserved spectrum. CME, et al. continue to maintain that comparative hearings are the best system for allocating NCE licenses on reserved spectrum. We believe that the broadcasters' assumption that lotteries and point systems will save the Commission resources is erroneous. However, should the Commission ultimately decide not to retain comparative hearings, CME, et al. propose that the Commission adopt a point system that rewards applicants who foster responsiveness to local communities, offer diverse and alternative programming, and serve underserved audiences. The point system should grant credits for localism, diversity of control, local diversity, minority control, fair distribution of service, and spectrum efficiency. It should also incorporate meaningful tie-breaking mechanisms, holding periods, and other anti-fraud regulations.

CME, et al. also support reserving additional NCE spectrum under a special processing track. The Commission should not force NCE applicants to participate in auctions or lotteries, and should reject proposals that declare NCE broadcasters ineligible for commercial spectrum.

**I. THE COMMISSION SHOULD RETAIN COMPARATIVE HEARINGS TO ALLOCATE NCE LICENSES ON RESERVED SPECTRUM**

The Commission should retain comparative hearings because they ensure the selection of

applicants who will meet the public interest standard and fulfill the mission of NCE broadcasting.<sup>2</sup>

Congress requires the Commission to grant licenses only to broadcasters who will serve the public interest.<sup>3</sup> Furthermore, Congress has found that the public interest is served when public telecommunications services create alternative programming responsive to local communities.<sup>4</sup> Only through comparative hearings can the Commission perform a thorough analysis of each application and license the most qualified candidate.<sup>5</sup>

The Commission should not underestimate the support for comparative hearings. Comments which propose alternative systems should not be interpreted as wholesale rejections of

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<sup>2</sup>See Center for Media Education, et al. (ACME, et al.) Comments at 2-9; Jimmy Swaggart Ministries (AJSM) Comments at 3-4. See also Student Educational Broadcasting (ASEB) Comments at 3 (arguing for arbitration by an ALJ).

<sup>3</sup>See 47 U.S.C. §§309(a) and 307(b).

<sup>4</sup>See 47 U.S.C. §396(a)(5).

<sup>5</sup>See CME, et al. Comments at 2-3.

the current system. Some commenters recognized the benefits of comparative hearings<sup>6</sup> and chose to recommend alternative systems *only after* the Commission decided to tentatively reject traditional hearings.<sup>7</sup> Thus, members of the public interest and broadcast community continue to support traditional comparative hearings.

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<sup>6</sup>See National Federation of Community Broadcaster (ANFCB) Comments at 3; National Public Radio (ANPR) Comments at 6. See also Pinebrook Comments at 2-6 (arguing that the Commission should reform comparative hearings by creating criteria to evaluate applicants, instead of abandoning the process all together).

<sup>7</sup>See Further Notice &9.

**A. The Commission and Commenters Overestimate the Benefits of Lotteries and Point Systems**

The Commission and several commenters overestimate the benefits of lotteries and point systems. Allocating NCE licenses through either lotteries or point systems will not effectively fulfill the public interest. Furthermore, neither system will save the Commission resources. CME, et al. assert that once costs and benefits are accurately assessed, comparative hearings continue to provide the best mechanism for allocating NCE licenses and for serving the public.

**1. Allocating NCE Licenses Through Either a Lottery or a Point System Will Not Meet the Public Interest Standard**

Use of lotteries will prevent the Commission from fulfilling the public interest standard. In their original filing, CME et al. argued that lotteries, even with preferences, may result in unqualified licensees.<sup>8</sup> Other commenters are equally skeptical of the Commission's ability to further the public interest if a lottery is employed.<sup>9</sup> When selection is based on chance, the Commission may not license the best candidate.

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<sup>8</sup>See CME, et al. Comments at 12.

<sup>9</sup>See, e.g., Colorado Christian University (ACCU $\cong$ ) Comments at 8; CSN International (ACSN $\cong$ ) Comments at 3; JSM Comments at 6; Moody Bible Institute (AMBI $\cong$ ) Comments at 4; NFCB Comments at 4-5; NPR Comments at 8; Noncommercial Educational Broadcast Licensees (ANCE Broadcasters $\cong$ ) Comments at 7; Pinebrook Comments at 7; Public Radio for the Front Range (APRFR $\cong$ ) Comments at 3; State of Oregon Comments at 5-10; Station Resource Group (ASRG $\cong$ ) Comments at 9-10; Student Educational Broadcasting (ASEB $\cong$ ) Comments at 1.

Pensacola Christian College (APCC≅) argues that unweighted lotteries with a simplified application process will further diversity of ownership and minority participation, and thus satisfy the Communications Act.<sup>10</sup> PCC erroneously assumes that lotteries will increase participation by traditionally excluded groups, and will lead to the licensing of quality broadcasters. In fact, increasing participation of these groups through lotteries would mean little because lotteries do not absolutely ensure such entities will be licensed.

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<sup>10</sup>See Pensacola Christian College (APCC≅) Comments at 16 (referring to 47 U.S.C. §309(i)(3) (which requires the Commission to grant lottery preferences to (1) applicants who increase diversity of ownership, and (2) applicants controlled by minorities).

In addition, CME, et al. and the National Federation of Community Broadcasters (ANFCB) refute the Commission's assertion that a lottery-selected licensee will further the public interest.<sup>11</sup> The Commission argued in the Further Notice &11 that lottery-selected licensees have financial incentives to respond to community needs because NCE stations rely on local funding.<sup>12</sup> However, CME et al. argued in its original filing that public broadcasting was designed to serve all members of the public, including the less affluent and underserved, through means that may not garnish the most financial support.<sup>13</sup> Additionally, wealthy donors may not seek to serve the unmet needs of a community<sup>14</sup> and thus, the Commission cannot blindly rely on wealthy contributors to labor for the public interest. Furthermore, the Commission's reliance on such a policy would increase the dependency of NCE broadcasters on the whims of wealthy factions.<sup>15</sup>

Similarly, using point systems to allocate licenses will fail to meet the public interest. Point systems are preferable to lotteries because they employ some degree of reasoned decision making. However, point systems cannot differentiate between candidates who have the same

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<sup>11</sup>See CME, et al. Comments at 9; NFCB Comments at 5-7.

<sup>12</sup>See Further Notice &11. See also PCC Comments at 14-15 (arguing in support of the Commission's assertion in the Further Notice &11).

<sup>13</sup>See CME, et al. Comments at 9. See also 47 U.S.C. §396(a) (stating A[i]t is in the public interest to encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities.≡).

<sup>14</sup>See NFCB Comments at 5-7.

<sup>15</sup>See id. at 6.

amount of points but who achieve those points to different degrees.<sup>16</sup> The ability to make such distinctions is crucial to licensing the most qualified applicant.

Moreover, point systems are based on a finite set of criteria despite the fact that there are infinite avenues to foster the public interest. A point system will leave highly qualified applicants, superior in ways novel to the Commission=s point system, without a license. Comparative hearings entail a detailed and thorough analysis of *all* aspects of the applicant, while point systems select licensees based on a narrow and incomplete assessment of applicant potential.

**2. Neither Lotteries Nor Point Systems Will Lead to the Anticipated Savings in Resources**

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<sup>16</sup>See CME, et al. Comments at 3.

Developing and enforcing a system to replace comparative hearings will be time-consuming, expensive, and result in added delays.<sup>17</sup> Under either a lottery or a point system, the Commission will be forced to choose among proposed preferences or credits. Determining the weight to give each preference or credit will be complicated at best. The Commission will also need to decide procedural issues such as whether to have filing windows, holding periods, annual certifications, opportunities to file petitions to deny, and other measures for verifying the validity of claimed preferences or credits. Developing and enforcing such procedures will require an ongoing allocation of time and money.

Furthermore, adopting either a lottery or a point system will invite court challenges.<sup>18</sup> Along with petitions to deny from dissatisfied applicants and members of the public who are concerned with the quality of the selected licensee, the Commission may be faced with allegations that it acted arbitrarily when employing the alternative system. With a multitude of proposals to choose from, the preferences or credits ultimately chosen and the weight given to each will likely be challenged as arbitrary decision making. Such allegations will lead to time-consuming litigation and appeals, and will require significant resources to resolve.

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<sup>17</sup>Many commenters agree that lotteries will increase speculators, backlog and delays in licensing. See Americans for Radio Diversity (AARD≅) Comments at 1; American Family Association (AAFA≅) Comments at 2; CME, *et al.* Comments 13-14; NFCB Comments at 5; NPR Comments at 8-9; NCE Broadcasters Comments at 6; PRFR Comments at 3; SRG Comments at 9-10.

<sup>18</sup>See PCC Comments at 20-21 (arguing that adopting point systems will result in litigation).

To avoid implementing an alternative system that would jeopardize the public interest and save the Commission few, if any, resources, CME, et al. strongly urge the Commission to retain the current comparative hearing process.

**II. IF THE COMMISSION DECIDES TO REPLACE COMPARATIVE HEARINGS, A POINT SYSTEM IS PREFERABLE TO ALLOCATION BY LOTTERY.**

If the Commission decides to replace comparative hearings, CME, et al. urge the Commission to adopt a point system. A point system is preferable to a lottery because it can be designed to select a qualified applicant. When implementing a point system, the Commission should adopt meaningful criteria to further the public interest and employ procedures to ensure that broadcasters remain qualified throughout the entire licensing period.

**A. A Point System Should Grant Credit to Applicants Who Are Responsive to Local Communities, Offer Diverse and Alternative Programming, and Serve Underserved Audiences**

A valid point system will reward applicants who further the purpose and mission of NCE broadcasting.<sup>19</sup> Because point systems allocate licenses to applicants who have the most points, the Commission must carefully select both the criteria employed for awarding points *and* the weight given to each criterion. CME, et al. support adopting the credits suggested by various commenters that will create incentives for broadcasters to provide responsive local programming and service to underserved communities.

**1. The Commission Should Award Localism Credits to Applicants Who Demonstrate Responsiveness to Local Needs**

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<sup>19</sup>See 47 U.S.C. §§309(a), 307(b) and 396(a)(5).

NCE broadcasters that are responsive to local community needs will best fulfill the public interest mandate.<sup>20</sup> Stations that are integrated within their communities of license are more likely to be sensitive to community concerns. The Carnegie Commission on Educational Television viewed local communities as the heart of educational broadcasting and recognized the importance of community input.<sup>21</sup> Its vision for noncommercial television is surely applicable to all NCE broadcasting, and the FCC should heed the Carnegie Report's recommendations:

Educational television is to be constructed on the firm foundation of strong and energetic local stations. The heart of the system is to be in the community...[T]he overwhelming proportion of programs will be produced in the stations...local skills and crafts will be utilized and tapped...Like a good metropolitan newspaper, the local station will reflect the entire nation and the world, while maintaining a firm grasp upon the nature and needs of the people it serves.<sup>22</sup>

To ensure that NCE stations are community-centered stations, localism credits should be granted to applicants who a) have a local headquarters within the community they propose to serve,<sup>23</sup> b) are financially supported by a significant amount of local funding,<sup>24</sup> c) have a board of directors

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<sup>20</sup>Localism credits expand on the Commission's proposal for a Representativeness credit in the Further Notice &24.

<sup>21</sup>See Carnegie Commission on Educational Television, Public Television: A Program for Action, 87 (1967). When passing the Educational Television Facilities Act of 1962, Congress relied upon findings by the Carnegie Commission on Educational Television. The mission of the Carnegie Commission was to assist the improvement of noncommercial television.

<sup>22</sup>Id.

<sup>23</sup>CME, et al. urge the Commission to define Alocal narrowly to ensure that the station is truly integrated within its community of license, and that only individuals who are interested in the welfare of the community influence station policy.

<sup>24</sup>While CME, et al. believe that broadcasters supported by local funding should be awarded credit, the Commission should not give local funding such weight that applicants who provide service to underserved, less affluent communities are significantly disadvantaged. For

comprised of a significant portion of local residents, d) propose a significant percentage of local programming, e) allow local residents to have air time, and f) are local educational organizations, local accredited educational institutions, or part of a state-wide plan.<sup>25</sup>

Because localism is essential to fulfilling the Carnegie Commission=s vision for NCE broadcasting and the public interest mandate in general, localism credits should be granted more weight than other credits. Only applicants who obtain localism credit should receive licenses. Without meeting at least some localism criteria, broadcasters will not adequately fulfill the public interest.

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example, stations who do not receive financial support from less affluent local residents may nonetheless provide a significant and necessary service. Such broadcasters should not be precluded from receiving a license.

<sup>25</sup>Commenters support a variety of the aforementioned localism credits. See ARD Comments at 2; CCU Comments at 12-13, 15; CME, et al. Comments at 15; NFCB Comments at 10-14; NPR Comments at 10-19; NCE Broadcasters Comments at 8; Public Radio for the Front Range (APRFR≡) Comments at 4-5; Real Life Educational Foundation of Baton Rouge (AReal Life≡) Comments at 2-4; State of Oregon Comments at 13; West Coast Public Radio and Rocky Mountain Public Radio (AWCPR & RMPR≡) Comments at 7.

While some commenters oppose granting localism credits, their rationales are unpersuasive. For example, JSM opposes the use of representativeness (localism) credits, arguing that they disadvantage applicants who serve a particular underserved segment of the community, and favor applicants who serve a cross-section of the community.<sup>26</sup> However, if a point system favors applicants who serve only small segments of the population, the majority of audiences will be left unserved. While it is in the public interest for stations to serve all types of audiences, frequencies are limited and thus, applicants who incorporate the needs of a large cross-section of their community should be preferred over those who do not. In addition, Educational Media Foundation (AEMF≅) argued that credits for Alocal educational presence≅ do not necessarily reward the best broadcaster because non-local broadcasters might provide beneficial service.<sup>27</sup> However, CME, et al. believe that local organizations must be favored over other broadcasters because local entities are more likely to provide responsive local educational programming.

**2. The Commission Should Reward Applicants Who Offer Diverse and Alternative Programming, and Serve Underserved Audiences**

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<sup>26</sup>See JSM Comments at 10.

<sup>27</sup>See Educational Media Foundation (AEMF≅) Comments at 9.

The Commission has recognized that Adiverse programming with sensitivity to the diverse needs, interests and concerns of our nation=s people, which may be underserved by commercial broadcasting, remain central to the unique service provided by Public Broadcasting.<sup>28</sup> Diverse and alternative programming, and service to underserved audiences can be promoted through credit for a) diversity of control, b) local diversity, c) minority control, d) fair distribution of service, and e) spectrum efficiency.

Many commenters agree that applicants who have few stations should be awarded diversity of control credit.<sup>29</sup> Such a credit will increase diverse programming and ownership by

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<sup>28</sup>Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Agencies, 98 FCC 2d 746, 747 (1984) (quoting H.R. Rep. No. 82, 97th Cong., 1st Sess. 11 (1981)).

<sup>29</sup>See ARD Comments at 2; CME, et al. Comments at 15; NFCB Comments at 15; NPR Comments at 19-21; NCE Broadcasters Comments at 8-9; PRFR, Comments at 5; Real Life Comments at 2; State of Oregon Comments at 13; WCPR & RMPR Comments at 8. CME, et al. urge the Commission to consider the number of stations owned or controlled by the applicant *and* its board of directors. The Commission should also differentiate applicants who have many stations (such as 20 to 50) from applicants who have few stations (such as 5). Such distinctions can be made by allocating credits on a sliding scale; fewer credits could be awarded to applicants with more stations.

creating incentives for new voices to enter the applicant pool. Similarly, commenters agree that credit for local diversity will increase diverse programming for a community by preventing applicants controlled or owned by broadcasters already servicing that community from being favored.<sup>30</sup>

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<sup>30</sup>See CCU Comments at 9-10; CSN Comments at 8; JSM Comments at 9.

In addition, the Commission should grant a minority control credit to applicants who are owned and controlled by minorities and women.<sup>31</sup> Increasing the number of broadcast stations owned and controlled by minorities and women will create new diverse and alternative programming. Furthermore, such stations may be more sensitive to the needs of underserved communities. In previous proceedings, Commenters have argued that the Commission can overcome *Adarand* problems.<sup>32</sup> However, if the Commission doubts its ability to overcome such constitutional obstacles, it should initiate its own studies to develop a sufficient record.<sup>33</sup>

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<sup>31</sup>See *CME, et al.* Comments at 15; NFCB Comments at 11-12; Real Life Comments at 2.

<sup>32</sup>See *Adarand Constructors v. Pena*, 515 U.S. 200 (1995). See, e.g., Comments of NOW Foundation, et al., Review of the Commission's Broadcast and Cable Rules and Policies, MM Docket No. 98-204 and MM Docket No. 96-16 (March 1, 1999). But see Community TV Comments at 5; JSM Comments at 10; NCE Broadcasters Comments at 14; Pinebrook Comments at 6; WCPR & RMPR Comments at 13. Such Commenters argue that the Commission cannot overcome constitutional problems created by *Adarand*.

<sup>33</sup>The Commission has previously mentioned plans to conduct such studies. See, e.g., Implementation of Section 309(j) of the Communications Act, MM Docket No. 97-234, 13 FCC Rcd. 15920, 15994 n.224 (1998).

Commenters argue that a fair distribution of service credit should be allocated to applicants who propose to serve underserved communities.<sup>34</sup> In fact, §307(b) of the Communications Act<sup>35</sup> may require the Commission to adopt a fair distribution of service credit to ensure that spectrum is fairly, efficiently, and equitably distributed.<sup>36</sup> Such credits should be granted to applicants who provide the first, second or third full-time NCE service. Rewarding such applicants will simultaneously serve to increase programming to underserved audiences and will provide incentives for applicants to create alternative voices in each community.<sup>37</sup>

Spectrum efficiency credits should be granted to applicants who serve a larger population and geographic coverage area, and applicants who propose technological improvements to

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<sup>34</sup>See CCU Comments at 10; CME, *et al.* Comments at 15; CSN Comments at 8; NFCB Comments at 17; NPR Comments at 22-23; NCE Broadcasters Comments at 9; SRG, Comments at 15-16. See also JSM Comments at 9 (supporting a credit that rewards applicants who provide the first local service *licensed* to a community).

<sup>35</sup>47 U.S.C. § 307(b) provides:

In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distributions of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

<sup>36</sup>See Houston Christian Broadcasters, Inc. (AHCBI) Comments at 20-21; JSM Comments at 9; MBI Comments at 18-19; Pinebrook Comments at 4. MBI and HCBI also argue that §307(b) may be a determining factor when allocating licenses.

<sup>37</sup>While JSM supports rewarding applicants that provide the first local service licensed to a community, JSM criticizes the Commission's fair distribution of service credit. JSM argues that the Commission's credit fails to identify applicants with markedly superior or inferior coverage for underserved audiences. See JSM Comments at 11-12. However, CME, *et al.* propose a technical parameters credit (discussed below) which will give broadcasters incentives to increase coverage and to improve their current services while serving underserved communities.

service.<sup>38</sup> Such credits will increase service to underserved communities by giving broadcasters incentives to reach greater audiences and to improve current services.

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<sup>38</sup>See CCU Comments at 11-12; CME, et al. Comments at 15; CSN Comments at 8; NPR Comments at 22; NCE Broadcasters Comments at 9; State of Oregon Comments at 13 (arguing that Aspecific technical capability≡ should receive credit); WCPR & RMPR Comments at 8.

Various commenters criticize credits which foster diverse and alternative programming, and service to the underserved. Some commenters fear a local diversity credit will favor non-local organizations that know little about the community<sup>39</sup> at the expense of local stations or educational organizations who want a second NCE service to respond to the needs of their community.<sup>40</sup> Other broadcasters fear fair distribution of service and spectrum efficiency credits will favor large broadcasters and not reward applicants who will best serve the community.<sup>41</sup> However, CME, et al. believe applicants who foster diverse and alternative programming, and service to underserved communities should be rewarded. Heavily weighted localism credits<sup>42</sup> will ensure that large broadcasters and non-local stations are responsive to local needs, and will mitigate any disadvantage to local educational organizations who want a second station. Thus, a

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<sup>39</sup>See NFCB Comments at 8-9; NPR Comments at 21-22; NCE Broadcasters Comments at 10-11; Pinebrook Comments at 6; PRFR Comments at 5; WCPR & RMPR Comments at 9.

<sup>40</sup>See NPR Comments at 21-22; NCE Broadcasters Comments at 10-11; WCPR & RMPR Comments at 9; SRG Comments at 13.

<sup>41</sup>See ARD Comments at 2 (objecting to spectrum efficiency); NFCB Comments at 10 (objecting to technical parameters [spectrum efficiency]); PRFR Comments at 5-6.

<sup>42</sup>See supra p. 9-10.

point system which highly values localism will ensure responsiveness and prevent wealthy broadcasters from monopolizing reserved spectrum.

**B. The Commission Should Reject Proposals to Grant Credit for AFirst to File, AExperienced Broadcasters, and APast Record**

Some commenters have urged the Commission to adopt credit for Afirst to file,<sup>43</sup> Aexperienced broadcasters,<sup>44</sup> and Apast record.<sup>45</sup> CME, et al. oppose such proposals because they do not provide incentives to improve the current status of public broadcasting, and thus, do little to further the public interest.

Commenters in support of a Afirst to file credit argue that applicants who spend the resources to Apioneer a frequency should be rewarded.<sup>46</sup> Proponents of this view argue that such a credit will encourage qualified applicants to seek creative ways to utilize available channels which in turn, will increase the number and diversity of radio and television voices available to the public. Such commenters distort the reality of a Afirst to file credit. Granting such a credit

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<sup>43</sup>See HCBI Comments at 9; MBI Comments at 9-10.

<sup>44</sup>See CSN Comments at 6; Community TV Comments at 3-4; HCBI Comments at 9; MBI Comments at 9-10. Note that while HCBI, MBI and Pinebrook do not explicitly recommend a credit for Aexperience, experience as a broadcaster is an implicit prerequisite for obtaining their Apast record credit. See also JSM Comments at 8 (arguing applicants should have an Aestablished educational presence of at least five years before receiving any points).

<sup>45</sup>See HCBI Comments at 12-13; MBI Comments at 12-13; Pinebrook Comments at 4.

<sup>46</sup>See HCBI Comments at 9; MBI Comments at 9-10. See also American Family Association (AAFA) Comments at 5-6. AFA proposes a Afirst to file licensing system to allocate competing NCE licenses. The Commission should reject such proposals for the same reasons advanced for rejecting a Afirst to file credit. Moreover, CME, et al. assert that a licensing system based solely on a finder's preference would be even more dangerous to the public interest than a credit.

rewards wealthy broadcasters who can file quick multiple applications and who have the funds to Apioneer≡ a frequency. A Afirst to file≡ credit will not yield broadcast diversity, but a broadcast monopoly. Furthermore, this credit does nothing to encourage broadcasters to provide alternative programming for local underserved audiences.

Additionally, CME, et al. believe a Afirst to file≡ credit will result in a Aand rush≡ of applicants for NCE frequencies, and will prevent future upgrades by existing licensees because applicants will be more concerned with filing new applications than improving their current broadcasting services.<sup>47</sup> While proponents of the Afirst to file≡ credit respond by arguing that it is not in the public interest for the Commission to Awarehouse≡ NCE frequencies,<sup>48</sup> CME, et al. argued in its initial comments that the Commission has historically distributed NCE licenses slowly, focusing on the quality of the applicant, rather than on the speed of distribution.<sup>49</sup> A Afirst to file≡ credit would create incentives for applicants to shift their focus from the quality of their applications to the rate at which they could file. The Commission should continue its policy of rewarding quality over speed by rejecting this credit.

Commenters who support credit for experienced broadcasters and past untarnished records argue that such factors are the Amost reliable gauge≡ of the future service such applicants can provide.<sup>50</sup> While rewarding experience and untarnished records may maintain the *current*

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<sup>47</sup>See NPR Comments at 28; SRG Comments at 19.

<sup>48</sup>See HCBI Comments at 11; MBI Comments at 11.

<sup>49</sup>See CME, et al. Comments at 6.

<sup>50</sup>See HCBI at 13; MBI Comments at 12 (citing Wabash Valley Broadcasting Corporation, 1 RR 2d 573 (1963), Policy Statement on Comparative Hearings Involving Regular

quality of broadcasting, CME, et al. urge the Commission to *advance the future* of NCE broadcasting. Advancing the public interest requires the Commission to adopt credits that promote new ownership and foster diverse and alternative programming for local underserved audiences.<sup>51</sup> Credit for experience or untarnished records may actually be a disincentive for ingenious change.

**C. The Commission Should Hold Comparative Hearings to Break Ties, or Enforce a Meaningful Tie-Breaking Factor that Furthers the Public Interest**

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Renewal Applicants, 18 RR 2d 1901 (1970)). See also JSM Comments at 8; Pinebrook Comments at 4.

<sup>51</sup>See 47 U.S.C. §396(a)(5).

Because a point system will inevitably lead to ties, the Commission must carefully select a tie-breaking mechanism that ensures the best applicant is selected. In its original filing, CME, et al. urged the Commission to hold comparative hearings to break ties.<sup>52</sup> Once again, CME, et al. assert that while two applicants may have the same number of points, it is unlikely that both candidates will meet the criteria in the same manner or to the same degree. Only through comparative hearings can the Commission distinguish between such candidates and license the most qualified applicant.

Should the Commission decide not to hold comparative hearings to break ties, it should employ meaningful tie-breaking factors that would award licenses to applicants who further the public interest. For example, awarding a license to the applicant who proposes the largest amount of local programming<sup>53</sup> will further the public interest by prioritizing responsiveness to local communities. Such a tie-breaker would create incentives for applicants to design local programming to receive localism credits and to win ties. Additionally, preferencing applicants with the fewest pending applications<sup>54</sup> will discourage speculators and encourage applicants to use their resources to increase the quality, not quantity of their applications.

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<sup>52</sup>See CME, et al. Comments at 16.

<sup>53</sup>See NFCB Comments at 18.

<sup>54</sup>See NFCB Comments at 18; NPR Comments at 26-27; NCE Broadcasters Comments at 14-15; SRG Comments at 18; WCPR & RMPR Comments at 14.

The Commission should reject tie-breaking mechanisms that do not differentiate between applicants in a manner that furthers the public interest. The Commission should reject lotteries<sup>55</sup> and Afirst to file<sup>56</sup> credits as tie-breaking mechanisms.<sup>57</sup> While use of lotteries to break ties between two or more qualified applicants may be less disastrous than using lotteries to choose between all competing applicants, a more reasoned decision making process is preferable. Lotteries will fail to make the necessary distinctions to ensure that the better candidate is licensed. In addition, a Afirst to file<sup>56</sup> tie-breaker will not advance the public interest.

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<sup>55</sup>See CME, et al. Comments at 16; CCU Comments at 16.

<sup>56</sup>See CME, et al. Comments at 16; CCU Comments at 16; NPR Comments at 28; SRG Comments at 19.

<sup>57</sup>See supra pp. 4-7, 14-16.

The Commission should also reject time-sharing as a mechanism for resolving ties.<sup>58</sup> As CME, et al. argued in its original filing, the public is better served by one highly qualified licensee;<sup>59</sup> mandatory time-sharing prevents consistency in programming and is confusing to the public.<sup>60</sup> Time-sharing also disadvantages broadcasters by forcing stations with different objectives, audiences, staffs and policies to share a frequency.<sup>61</sup> Such measures prevent stations from developing a solid, cohesive identity.<sup>62</sup> Additionally, time-sharing could create constitutional difficulties if the Commission favors one broadcaster over another when granting one station access to the most desirable broadcast hours.<sup>63</sup>

### **III. THE COMMISSION SHOULD ADOPT HOLDING PERIODS AND OTHER ANTI-FRAUD PROCEDURES TO ENSURE THE INTEGRITY OF ANY LICENSING SYSTEM**

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<sup>58</sup>See CME, et al. Comments at 16; CCU Comments at 17-18 (arguing that most broadcasters oppose opportunities for time sharing even when their opposition results in an ultimate rejection of their application); JSM Comments at 13-14; NFCB Comments at 18-19, NPR Comment at 27-28; NCE Broadcasters Comments at 15; SRG Comments at 19; WCPR & RMPR Comments at 15-16.

<sup>59</sup>See CME, et al. Comments at 16. While some commenters recommend time-sharing, arguing that its defects are illusory (see ARD Comments at 2-3; PRFR Comments at 6), the public would be best served by one qualified licensee even if broadcasters can cooperate to share a frequency.

<sup>60</sup>See CCU Comments at 17; NPR Comments at 27; NFCB Comments at 18-19; SRG Comments at 19.

<sup>61</sup>See CCU Comments at 17; JSM Comments at 21; NFCB Comments at 18-19; NPR Comments at 27; SRG Comments at 19.

<sup>62</sup>See NPR Comments at 27.

<sup>63</sup>See JSM Comments at 14 (arguing that showing favoritism towards one broadcaster when allocating time could raise constitutional concerns under the freedom of association and religion clauses of the First Amendment).

The Commission should adopt holding periods to deter speculators and to protect the public.<sup>64</sup> Any system of licensing that relaxes applicant requirements will attract speculators. Speculators jeopardize the public interest because they are unlikely to offer quality noncommercial broadcasting and they may sell public airwaves to underqualified broadcast stations.

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<sup>64</sup>See ARD Comments at 3; CCU Comments at 19-20; HCBI Comments at 15-16; Kaleidoscope Comments at 4-5; MBI Comments at 15-16; NFCB Comments at 20; NPR Comments at 28-29; PRFR Comments at 6; SRG Comments at 19.

Commenters who oppose holding periods offer unconvincing arguments. For example, Community TV argues holding periods are unnecessary because turn-overs rarely occur in the NCE context.<sup>65</sup> However, the frequency of turn-overs is an insufficient argument to deny implementation of holding periods. Holding periods are necessary as a cautionary and protective measure. In addition, other commenters attempt to refute the need for holding periods, arguing that Alocal funding credits somehow obviate the need for holding periods.<sup>66</sup> Receipt of local funds however, would not preclude broadcasters from later selling their stations to other less qualified broadcasters for profit. Moreover, holding periods are necessary for licensees who do not receive local funding credits.

CME, et al. endorse proposals for eight year holding periods which allow the Commission to grant waivers in extraordinary circumstances and allow for transfers to NCE broadcasters who do not possess significantly fewer points than the original licensee.<sup>67</sup> Additionally, CME, et al. agree with the Commission that broadcasters who transfer their stations prior to the end of the holding period should recoup only legitimate prudent expenses.<sup>68</sup> Such measures will combat speculators and discourage the sale of public frequencies to unworthy broadcasters.

The Commission should also adopt additional anti-fraud measures to protect the public.

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<sup>65</sup>See Community TV Comments at 6. Note that Community TV's argument is unsupported by any evidence other than alleged Aexperience.≡

<sup>66</sup>See NCE Broadcasters Comments at 15-16; WCPR & RMPR Comments at 16.

<sup>67</sup>See NFCB Comments at 20-21; NPR Comments at 28-29.

<sup>68</sup>See Further Notice &&31-32.

As noted in CME, et al.'s original comments, holding periods alone are insufficient to protect the public. Once a licensee is selected, additional measures must be taken to ensure licensees remain true to their application promises. CME, et al. and others strongly advocate for annual certifications in addition to holding periods.<sup>69</sup> Some commenters disapproved of various credits (i.e., local diversity, spectrum efficiency) which rely on applicant proposals, fearing applicants

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<sup>69</sup>See CME, et al. Comments at 15; NFCB Comments at 21; NPR Comments at 28; State of Oregon Comments at 13-14; SRG Comments at 19.

would not fulfill their promises once licensed.<sup>70</sup> Annual certifications will minimize fraudulent manipulation of the application process.

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<sup>70</sup>See Community TV Comments at 4 (opposing spectrum efficiency credit); CSN Comments at 3-4 (opposing any credit that would be subject to Agamesmanship or manipulation by applicants and specifically opposing fair distribution of service and minority control credits); HCBI Comments at 6-8 (opposing credits that can be diluted or changed once an application is approved and specifically opposing local diversity and minority control credits); MBI Comments at 6-8 (opposing credits that can be diluted or changed once an application is approved and specifically opposing local diversity and minority control credits); NPR Comments at 22 (opposing credits for the first local service licensed to a community); NCE Broadcasters Comments at 11 (opposing credits for the first local transmission service); WCPR & RMPR Comments at 10-11 (opposing credits for the first local transmission service); SRG Comments at 11-12 (opposing fair distribution of service credit).

In addition, CME, et al. agree with other commenters that the Commission should adopt other anti-fraud measures, such as requiring applicants to file documents in support of claimed credits,<sup>71</sup> requiring applicants to disclose their funding sources,<sup>72</sup> requiring applicants to certify that they have not entered into any agreements to transfer a permit or license,<sup>73</sup> giving applicants the opportunity to file petitions to deny once a licensee is chosen,<sup>74</sup> and enforcing other measures such as random audits<sup>75</sup> to protect the public. The Commission should also create filing windows with limits on the number of applications one can file to discourage speculators and to force applicants to enhance the quality of their applications.<sup>76</sup>

#### **IV. THE COMMISSION SHOULD RESERVE ADDITIONAL SPECTRUM FOR NCE BROADCASTERS UNDER A SPECIAL PROCESSING TRACK**

As CME, et al. discussed in their original filing, the public's access to noncommercial programming has been artificially limited by a lack of frequencies available for NCE use.<sup>77</sup> The

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<sup>71</sup>See CSN Comments at 5; HCBI Comments at 14-15; MBI Comments at 14-15; NPR Comments at 29; NCE Broadcaster Comments at 13; State of Oregon Comments at 10-12; WCPR & RMPR Comments at 12-13.

<sup>72</sup>See ARD Comments at 2; Pinebrook Comments at 3.

<sup>73</sup>See NFCB Comments at 21; SRG Comments at 19.

<sup>74</sup>See NPR Comments at 30; NCE Broadcasters Comments at 12; SRG Comments at 20; WCPR & RMPR Comments at 11.

<sup>75</sup>See NFCB Comments at 23. See also CCU Comments at 20 (proposing that applicants be allowed to A-post-monitor the licensee); PRFR Comments at 4-5 (proposing applicants sign affidavits and that the Commission re-verify credits at license renewal intervals and conduct random audits).

<sup>76</sup>See Community TV Comments at 4; EMF Comments at 3-6; SRG Comments at 14; WCPR & RMPR Comments at 14-15.

<sup>77</sup>See CME, et al. Comments at 16.

Commission should respond to the public's demand for noncommercial programming by reserving additional spectrum for NCE broadcasters.

CME, et al. support NPR's proposal for reallocating additional spectrum under a special processing track.<sup>78</sup> Under a special processing track, once an NCE entity files a technically-acceptable application for non-reserved spectrum, the channel would be reserved. Once reserved, only other NCE entities could compete for such spectrum through comparative hearings or under the CME, et al. point system proposed above.<sup>79</sup> The Commission could discourage significant reallocation of commercial spectrum by limiting the number of applications an NCE broadcaster can file.<sup>80</sup> Furthermore, to prevent NCE broadcasters from selling licenses to commercial entities, the Commission could simply prohibit transfers to entities that operate on a commercial basis.<sup>81</sup>

Where multiple applicants seek the same non-reserved spectrum, such candidates will be forced to compete through comparative hearings or under the point system. However, if there is a lack of interest for a particular non-reserved frequency, a special processing track may, in effect, award the license to the first broadcaster who files a technically-acceptable application. Thus, if the Commission adopts a special processing track, CME, et al. urge the Commission to tighten NCE eligibility standards to prevent the licensing of less qualified station owners who file technically-acceptable applications for uncontested spectrum.

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<sup>78</sup>See NPR Comments at 38-39; Further Notice &40.

<sup>79</sup>See supra pp. 7-22.

<sup>80</sup>See NPR Comments at 39.

<sup>81</sup>See id.

A special processing track is superior to the reallocation system proposed in the Further Notice &37. The Commission's proposal reserves additional spectrum only if the applicant seeking reallocation has no other reserved spectrum available for use, and if reallocation would provide the first or second NCE service to the community. Furthermore, the Commission's proposal does not require broadcasters to meet standards equivalent to the point system above, and thus, will attract non-local broadcasters unresponsive to local needs. The special processing track is superior because it will result in more reserved spectrum, and because it employs comparative hearings or the point system above,<sup>82</sup> which will ensure newly licensed NCE broadcasters further the public interest.<sup>83</sup>

**V. THE COMMISSION SHOULD REJECT PROPOSALS TO ALLOCATE COMMERCIAL SPECTRUM THROUGH ANY MEANS THAT FORCE NCE APPLICANTS TO PARTICIPATE IN AUCTIONS OR LOTTERIES**

Adopting a special processing track obviates the need to develop a system for allocating non-reserved spectrum among competing commercial and noncommercial

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<sup>82</sup>See supra pp. 7-22.

<sup>83</sup>If the Commission adopts the reallocation system proposed in the Further Notice &37, it should require newly licensed applicants to provide a certain amount of local programming. This requirement would ensure that licenses are not granted to broadcasters who lack proposals to meet local needs. The Commission should also prohibit license transfers to commercial entities, or require that the transferor return the spectrum to the Commission. The Commission could then reallocate the channel to non-reserved spectrum. See NFCB Comments at 26.

applicants. In the Further Notice &&36-44, the Commission proposed a variety of methods for granting licenses when NCE and commercial entities compete for commercial spectrum. If the Commission adopts a special processing track however, auctions, ineligibility requirements and other hybrid approaches become unnecessary. Under a special processing track, NCE broadcasters will no longer need to compete with commercial applicants for non-reserved spectrum because non-reserved spectrum will become reserved once a technically-acceptable application is filed. Thus, adopting a special processing track may save the Commission resources and prevent problems that may arise under a system where NCE and commercial applicants compete against each other.

**A. NCE Participation in Auctions is Prohibited by Statutory Authority and Public Policy**

Congress prohibits the Commission from employing auctions to allocate broadcast licenses or construction permits for reserved and non-reserved spectrum where there is a NCE applicant.<sup>84</sup>

While some commenters argue that the Commission is precluded from utilizing auctions only where NCE broadcasters are applying for *reserved* spectrum,<sup>85</sup> statutory language and legislative history demonstrate otherwise.

The Balanced Budget Act of 1997 provides that 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.<sup>86</sup> Section 397(6) refers to A noncommercial educational broadcast station and A public broadcast station which,

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<sup>84</sup>Balanced Budget Act of 1997, section 3002 (a)(2), Pub. L. No.105-33, 111 Stat. 258 (1997) (codified, as amended, at 47 U.S.C. §309(j)(2)(C)).

<sup>85</sup>See, e.g., EMF Comments at 12; Kaleidoscope Comments at 3. See also Blue Sky Broadcasting (ABSBN) Comments at 2-3 (arguing Congress did not intend to preclude NCE applicants from auctions).

<sup>86</sup>Balanced Budget Act of 1997, section 3002 (a)(2), Pub. L. No.105-33, 111 Stat. 258 (1997) (codified, as amended, at 47 U.S.C. §309(j)(2)(C)).

(A) under the rules and regulations of the Commission in effect on the effective date of this paragraph, 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

(B) is owned and operated by a municipality and which transmits only noncommercial programs for education purposes.<sup>87</sup>

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<sup>87</sup>See 47 U.S.C. §397(6).

Section 397(6) defines noncommercial educational broadcast station and public broadcast station in terms of their eligibility, ownership and operators; 397(6) does not distinguish NCE stations that operate on reserved spectrum from those that do not. Thus, the statutory language of 309(j)(2)(C) clearly prohibits the Commission from using auctions to allocate licenses or permits when there are NCE applicants, not just when NCE broadcasters are applying for reserved spectrum. With respect to codified federal statutes, the legislative intent of Congress is to be derived from the language and structure of the statute itself.<sup>88</sup> Therefore, interpretations of 309(j)(2)(C) which serve to exclude only a subset of NCE broadcasters from auctions are contrary to Congressional intent.

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<sup>88</sup>See US v. Lanier, 117 S. Ct. 1219, 1226, 520 U.S. 259 (1997).

Moreover, legislative history supports the exclusion of NCE applicants from auctions for reserved and non-reserved spectrum. It is well established that where 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.<sup>89</sup> Congress rejected an earlier version of §309(j)(2)(C) which would have excluded NCE applicants only from auctions for *reserved* spectrum.<sup>90</sup> Thus, Congress was clearly aware of a narrower exemption and chose not to implement it. Congressional intent to categorically exclude NCE broadcasters from auctions is evident.<sup>91</sup>

CME, et al. support the comments of NPR which argue that subjecting NCE applicants to auctions would harm the public interest by restricting diverse programming.<sup>92</sup> Requiring NCE applicants to compete with commercial applicants in auctions would virtually eliminate all noncommercial programming from the non-reserved spectrum because NCE applicants do not

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<sup>89</sup>Rusello v. United States, 464 U.S. 16, 23-24 (1983)(citing Arizona v. California, 373 U.S. 546, 580-581 (1963)).

<sup>90</sup>Both of the Senate and House bills, which were not enacted, exempted Apublic telecommunications services, as defined in §397(14) of the Communications Act of 1934 (47 U.S.C. §397(14)),when the license application is for channels reserved for noncommercial use.≡ See H.R. 2015, 105th Cong., 1st Sess., §3301(a)(2)(D); S. 947, 105th Cong., 1st Sess., §3001(a)(2)(B).

<sup>91</sup>BSB argues that the legislative history of §309(i)(5)(B) indicates that Congress did not intend to preclude NCE broadcasters from auctions. See BSB Comments at 2-3. Such an interpretation should be rejected. Accepting BSB=s argument would place §309(i)(5)(B) in direct contradiction with the clear language of §309(j)(2)(C). Section 309(j)(2)(C) is dispositive of the issue concerning the applicability of auctions to NCE applicants, and legislative history pertaining to §309(i)(5)(B), a section dealing with lotteries, should be accorded no value.

<sup>92</sup>See NPR Comments at 33-34.

have the resources to compete effectively against commercial broadcasters. CME, et al. noted in its original filing that commercial licenses are expensive and that prices continue to escalate.<sup>93</sup>

Thus, commercial licenses are not a viable option for many NCE broadcasters.

**B. The Commission Should Reject Proposals to Make NCE Entities Ineligible for Commercial Spectrum, and Hybrid Approaches that Force NCE Applicants to Participate in Auctions or Lotteries**

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<sup>93</sup>See CME, et al. Comments at 17.

The Commission should not make NCE entities ineligible for non-reserved spectrum.<sup>94</sup> Commenters note that spectrum reserved for NCE stations is intended to promote, not restrict, NCE broadcasting development.<sup>95</sup> Additionally, the Commission has fostered a long established precedent of NCE use of commercial spectrum.<sup>96</sup> Making NCE broadcasters ineligible would prohibit NCE stations currently operating on commercial spectrum from broadcasting, resulting in a decrease in diverse programming.<sup>97</sup>

Should the Commission decide not to adopt a special processing track, CME, et al. would reiterate its opposition to any mechanism that subjects NCE applicants to auctions or lotteries. As discussed above, Congress and public policy prohibit the Commission from using auctions where there are NCE applicants. Additionally, any approach that encompasses lotteries will fail to effectuate the public interest standard. The prohibition against auctions and the defects of lotteries will not be overcome by incorporating these practices into a hybrid system.

Commenters have also proposed approaches that require both NCE and commercial applicants to compete under a point system.<sup>98</sup> If the Commission adopts such an approach, it should note the problems likely to arise when attempting to compare NCE and commercial broadcasters, and the possible inequities that may follow. NCE and commercial applicants differ

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<sup>94</sup>But see Elgin FM Limited Partnership (AElgin FM $\cong$ ) Comments at 2 (arguing that NCE entities should be restricted to filing applications for reserved frequencies only).

<sup>95</sup>See NPR Comments at 36-37.

<sup>96</sup>See NCE Broadcasters Comments at 6-8.

<sup>97</sup>See NPR Comments at 36-37; NCE Broadcasters Comments at 6-8.

<sup>98</sup>See NFCB Comments at 24; NPR Comments at 41; State of Oregon Comments at 14.

greatly in resources, goals, policies, and size.<sup>99</sup> The Commission would have great difficulty developing a system to compare such divergent entities.

## **Conclusion**

The Commission should retain comparative hearings. Lotteries and point systems will not effectuate the public interest to the same degree as comparative hearings, and will not save the Commission resources. Should the Commission employ a point system, it should include credits for localism, diversity control, local diversity, minority control, fair distribution of service, and spectrum efficiency. Such credits will ensure that the licensee is responsive to local needs, offers diverse and alternative programming, and serves the underserved. The Commission should break ties using comparative hearings, and should adopt holding periods and annual certifications, along with other anti-fraud measures, to ensure the integrity of the system.

The Commission should also reserve additional spectrum for NCE broadcasters under a special processing track. The Commission should reject proposals that would subject NCE entities to auctions or lotteries or would make them ineligible for non-reserved spectrum.

Above all, the Commission should guide its decision making with the purpose and mission of noncommercial broadcasting in mind. The Commission should maintain a licensing system that serves the public interest and aspires to improve NCE broadcasting for all communities.

Respectfully submitted,

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<sup>99</sup>See NCE Broadcasters Comments at 5, 15.

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