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	)	

REPLY COMMENTS OF NATIONAL FEDERATION OF COMMUNITY BROADCASTERS

Cheryl A. Leanza
Gigi B. Sohn
Andrew Jay Schwartzman

MEDIA ACCESS PROJECT
1707 L Street, NW
Suite 400
Washington, D.C. 20036
(202) 232-4300

March 15, 1999

TABLE OF CONTENTS

Introduction 1

I. Commenters Overwhelmingly Agree that the Commission Should Not Adopt Lotteries. 2

II. The Commission Should Adopt a Point System with Carefully Refined Criteria and Should Pay Close Attention to Relative Point Allocations. 4
- A. Localism/Board Membership 4
- B. Diversity of Viewpoints 7
- C. Fair Distribution/Spectrum Efficiency 9
- D. Tie-Breakers.....10

III. The Commission Should Ensure Applicants Maintain the Characteristics that Lead to Their Selection and Should Not Adopt Proposals that Will Promote Speculative Activity. 11

IV. The Commission Should Adopt Procedures to Verify the Factual Accuracy of Applications. 13

Conclusion 15

Summary

NFCB notes with pleasure that most commenters in this proceeding agreed on the general principles, and indeed on many of the details, that the Commission should use to select among mutually exclusive NCE applicants. NFCB reminds the Commission that for many suggestions, its choice is not between all and nothing. Certain suggestions may be worthy of a modest number of points while other suggestions -- those that represent the core policy goals of the Commission -- should receive a larger allocation. Thus, for example, although the Commission may wish to award some credit to applicants that are part of a state-wide plan, the number of points granted to those applicants should not outweigh the number of points given to an applicant that is in close proximity to its proposed station.

The Commission must not forget that one of its statutory objectives is to ensure broadcasters meet the listening public's need for locally-based programming. In this era of proliferating information and entertainment sources, no entity can fulfill this goal as local noncommercial educational broadcast stations can. Increasing commercialization and media consolidation are making thoughtful, local programming a vestige of a bygone era. For this reason, to serve the public interest, the Commission must ensure that it selects noncommercial educational applicants that are best able to serve local communities throughout the nation.

In response to other commenters, NFCB opposes proposed definitions of "local" that are decidedly not local. The Commission should not, as suggested by some parties, award points to applicants located anywhere in the same state where it proposes a station. These definitions of "local" could grant an equal number of points to an applicant that is located 2 miles from its proposed station and to an applicant located 800 miles away from its proposed station.

Despite opposition from other public broadcasters, NFCB supports the Commission's proposal to grant credit to applicants that do not have another service in a proposed station's service area. While NFCB certainly supports public stations that wish to create a second program format in a community they already serve, NFCB does not believe that such second services should be preferred over an applicant seeking to bring an additional editorial voice to the area.

The Commission should not adopt preferences for characteristics, such as for government-controlled applicants, that are not reliable proxies for the quality of a potential licensee. If the Commission wishes to select applicants best able to serve members of the public in a certain community, it should articulate and award points for those criteria directly.

NFCB strongly opposes Moody Bible and Houston Christian's suggestion to allow a licensee to donate its license to another non-profit. Allowing parties to donate licenses would be an invitation for applicants to engage in gamesmanship and coordinated activity to avoid disclosing the real party in interest. Given an opportunity to transfer licenses quickly, entities with no intent to operate a station can create "shell" non-profit corporations that will exist only to obtain a license and donate it to another party.

NFCB supports the proposals submitted by NPR *et al.*, Alaska Public *et al.*, and SRG that would verify the accuracy of credits claimed by applicants during the application process. As NFCB stated in its comments, the danger of misrepresentations is great unless the Commission verifies the characteristics claimed by applicants. The Commission should adopt the strongest feasible methods of verification. Increased verification improves the integrity of the Commission's process, and will reduce burdens in the long term as applicants discover that they will not be allowed to violate the Commission's rules.

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	)	

REPLY COMMENTS OF
NATIONAL FEDERATION OF COMMUNITY BROADCASTERS

The National Federation of Community Broadcasters ("NFCB") submits these reply comments in response to the comments filed in the above-captioned docket.

Introduction

NFCB notes with pleasure that most commenters in this proceeding agreed on the general principles, and indeed on many of the details, that the Commission should use to select among mutually exclusive noncommercial educational ("NCE") applicants. Because of the consensus favoring a point system, NFCB focuses in these reply comments on refining specific criteria rather than on opposing proposals that most commenters dislike. NFCB emphasizes that it agrees with many of the comments submitted in this proceeding, particularly with the proposals that would verify the accuracy of credits claimed by applicants during the application process as proposed by NPR *et al.*, Alaska Public *et al.*, and SRG.

In critiquing some specific point system criteria proposals, NFCB reminds the Commission that its choice is not always between all and nothing. Certain suggestions may be worthy of a modest number of points while other suggestions -- those that represent the core policy goals of the Commission -- should receive a larger allocation. Thus, for example, although the Commission may

wish to award some credit to applicants that are part of a state-wide plan, the number of points granted to those applicants should not outweigh the number of points given to an applicant that is in close proximity to its proposed station.

The Commission must not forget that one of its statutory objectives is to ensure broadcasters meet the listening public's need for locally-based programming. In this era of proliferating information and entertainment sources, no entity can fulfill this goal as local noncommercial educational broadcast stations can. Increasing commercialization and media consolidation are making thoughtful, local programming a vestige of a bygone era. For this reason, to serve the public interest, the Commission must ensure that it selects noncommercial educational applicants that are best able to serve local communities throughout the nation.

I. Commenters Overwhelmingly Agree that the Commission Should Not Adopt Lotteries.

The overwhelming consensus of commenters, representing the entire range of NCE broadcasters, opposed lotteries. Most commenters agree that, by definition, lotteries will not select the applicant best suited to serve the public interest. *See, e.g.,* CME *et al.* comments at 9-14; NPR *et al.* comments at 7-9; Alaska Public *et al.* comments at 5-7; WAY-FM *et al.* comments at 4; Sound of Life *et al.* comments at 2-6. Indeed, by definition, if the best applicant prevails in a lottery, it is by chance, not by design.

NFCB disagrees with Pensacola Christian College that lotteries will increase broadcast diversity. Pensacola Christian argues that by reducing application barriers, a lottery will promote ownership diversity and encourage applications from minorities. *See* Pensacola Christian comments at 9, 16-17. Although Pensacola Christian may be correct that more applications are likely to be submitted if the Commission adopts a lottery allocation system, the increase in the number of purely

speculative applications will overwhelm any increase in applications by organizations controlled by women and minorities.

In a lottery, quantity does not produce quality. A lottery does not guarantee that an increase in applications will result in any increase in licensees with a particular characteristic. In fact, because a lottery does not evaluate quality, it will encourage entities with few qualifications to submit applications. *See* CSN International comments at 5, n.2 (quoting the Commission's conclusion when it considered the application procedures for commercial construction permits that "we now find that streamlining the application process may have facilitated the filing of applications by . . . sham and/or abusive applicants." *Revision of Construction Permit Applications for Commercial Broadcast Stations*, 4 FCC Rcd 3853, 3854 (1989).) NFCB favors increasing the number of women broadcasters and broadcasters of color. NFCB believes, however, that this goal is fully compatible with selecting the most-qualified applicant for a license by using a point system.

Pensacola Christian is further incorrect that the Commission is free to adopt an unweighted lottery. Pensacola Christian comments at 16. Section 309(i) of the Communications Act, 47 U.S.C. ϶ 309(i), clearly compels the commission to award certain preferences if it chooses to adopt a lottery. *TRAC v. FCC*, 836 F.2d 1349, 1361 (1988) (holding that Section 309(i) "clearly mandates minority and media ownership diversity preferences in *any* system of random selection") (emphasis in original). By adopting Section 309(i), Congress has concluded that the goals of the Communications Act are not fulfilled by a lottery unless certain preferences are incorporated into the lottery.

NFCB believes that the Commission should achieve its goal of increasing the number of minority-controlled broadcasters by conducting the necessary fact-finding to justify minority preferences under the Supreme Court's decision in *Adarand Constructors v. PeJa*, 515 U.S. 200

(1995). After completing the studies, the Commission should immediately commence a rulemaking to include credits for minority and women-controlled applicants in the point system hopefully adopted in this docket. *See* NFCB comments at 7, 10.

II. The Commission Should Adopt a Point System with Carefully Refined Criteria and Should Pay Close Attention to Relative Point Allocations.

In large part because the Commission has appeared to abandon the more sensitive comparative hearing process, most commenters, including NFCB, favored adoption of a point system to select among competing NCE applicants. Many proposals were similar to those put forth by NFCB. For example several commenters favored granting points to applicants that are eligible for PFTP funding, *see, e.g.*, NPR *et al.* comments at 23-24, Laredo Community College comments at 6-8 (suggesting a triage system that favors PFTP-eligible applicants), and Colorado Christian favored granting points to applicants that commit to maintaining a main studio. Colorado Christian comments at 12-13; *see also* NPR *et al.* comments at 11 (supporting credit for a local headquarters).

Below, NFCB critiques several proposals. While in many cases NFCB agrees with some portions of the proposals analyzed below, NFCB would like to highlight some important differences that might otherwise go unnoticed. To the extent that the Commission includes some of these criteria in its point system, NFCB encourages the Commission to pay close attention to their relative importance and to weight most heavily the criteria that promotes localism and the Commission's other core values.

A. Localism/Board Membership

Several commenters suggest definitions of "local" that are decidedly not local. National Public Radio *et al.* ("NPR *et al.*"), Alaska Public Telecommunications, Inc. *et al.* ("Alaska Public *et al.*"), and Station Resource Group ("SRG") suggest that an applicant should receive localism points

if it is located anywhere in the same state where it proposes to locate facilities. NPR *et al.* comments at 12-15; Alaska Public *et al.* comments at 8; SRG comments at 18. NPR *et al.* and Alaska Public *et al.* also suggest that an applicant that is part of a state-wide plan should receive localism points if it is in a state that *borders* the state where the station will be located. NPR *et al.* comments at 12-15; Alaska Public *et al.* comments at 8.

These definitions of "local" could grant an equal number of points to an applicant that is located 2 miles from its proposed station and to an applicant located 800 miles away from its proposed station. While "same-state" applicants may deserve some preference over an applicant located outside of that state, those applicants should not receive the same credit as an applicant that meets NFCB's proposed definition of local, *i.e.* an applicant located within 100 miles of the proposed facilities. If the point system adopted by the Commission cannot distinguish between an applicant located close to a community and one that is 800 miles away, it would be useless.[1]

Similarly, NPR *et al.* and Alaska Public *et al.* support granting the same amount of credit to applicants whose boards consist of 75 percent local representatives and to applicants that are states,

[1] It is not clear why a special provision is necessary to address applicants who are members of state-wide plans in bordering states if the Commission adopts a definition of local based on mileage and not on state borders. An applicant that is within 100 miles of a city would be eligible to receive localism credits regardless of whether it is in the same state. An applicant that is not close to its proposed station, but that is merely located in a state that *borders* the state where the station will be located, does not appear to deserve localism credits. NPR *et al.* admit as much at note 30 of their comments.

municipalities, state governmental entities or public educational institutions. NPR *et al.* comments at 15; Alaska Public *et al.* at 8. The Commission should not adopt this proposal. Applicants whose board members reside within 100 miles of the proposed station deserve more credit than applicants that are governmental entities. NPR *et al.* support its suggestion by arguing that government entities are "inherently local within the entity's geographic jurisdiction." NPR *et al.* at 15. Under such logic, an arm of the federal government would be considered local throughout the entire United States. Nothing guarantees that a government entity will be able to provide the public with service that is superior to another organization. Government entities, like all entities, perform some functions better than others, and serve some constituencies better than others. If the Commission wishes to select applicants best able to serve members of the public in a certain community, it should articulate and award points for those criteria directly. While the Commission should certainly not disadvantage government applicants, an applicant's status as a government entity is not a proxy for a superior ability to serve a particular community and should receive no special credit.

NPR *et al.* also suggest awarding points to applicants that receive 75 percent of their funding from local sources, but go on to define "local" sources as including CPB funding. NPR *et al.* comments at 16. While NFCB fully supports awarding credit to stations that receive CPB funding, that funding cannot be defined as local.

NFCB opposes adoption of a credit for applicants possessing a local educational presence. Similar to a credit for government institutions, a local educational presence credit does not guarantee that an applicant will provide the best local service to the community. *Accord* Sound of Life *et al.* comments at 14. If the Commission wishes to award credit to an applicant that will use its station to train individuals in broadcasting, *see NPRM* at n.26, it should award points for that criteria directly.

Applicants may be able to train members of the public in broadcasting regardless of whether they are a college or university.

NFCB opposes the Commission's proposal, supported by NPR *et al.* and Alaska Public *et al.*, that it grant points to a board that includes representation from certain categories of community groups. NPR *et al.* comments at 17-18; Alaska Public *et al.* at 8. As part of a point system, this criteria is too subjective and is subject to gamesmanship. *See* SRG comments at 12-13; Colorado Christian comments at 16. The Commission would need to more precisely define its proposed categories if it were to adopt this criteria, and, within the context of a point system, such definitions rapidly become unwieldy. *See NPRM* at n.27. For example, what constitutes representation of a civic group? Does a board member merely need to be a member of the Rotary Club, or must the board member be a leader of a civic group? Which organizations should be considered civic groups? While an Administrative Law Judge might be able to easily make these factual determinations in a comparative hearing, applicants will expand such definitions beyond meaning in a self-certification system. If the Commission did choose to adopt a representativeness criterion, NFCB opposes the categories proposed for inclusion. For example, why should "professionals" and not "blue collar workers" receive credit for representation on a noncommercial radio station's board? *See id.*

B. Diversity of Viewpoints

NPR *et al.*, Alaska Public *et al.*, and SRG oppose the Commission's local diversity credit because they believe it will disadvantage stations seeking to create a second service in a community. NPR *et al.* comments at 21-22; Alaska Public *et al.* comments at 10-11; SRG comments at 13. While NFCB certainly supports the creation of second services, NFCB does not believe that such second services should be preferred over an applicant seeking to bring an additional editorial voice

to the locality. NFCB's suggestions for criteria that will identify applicants that will serve the local community, such as stations providing relatively greater percentages of local programming, will address these commenters' concerns that an applicant with no ties to a local community might be selected over a distant applicant.

NFCB believes that it would be reasonable for the Commission to distinguish between applicants that control relatively few other stations and applicants that control larger numbers of stations as suggested by Alaska Public *et al.* and others. *See, e.g.,* Alaska Public *et al.* comments at 9 (suggesting preferences for applicants owning less than 25 and 50 stations). NFCB supports NPR *et al.*'s proposal that credit be limited to applicants with no more than 10 stations. *See* NPR *et al.* comments at 21.

NFCB opposes granting points for broadcast experience, as proposed by Moody Bible, Houston Christian, and Jimmy Swaggart. Moody Bible comments at 12; Houston Christian comments at 12-13; Jimmy Swaggart at 9. Adopting this credit would counteract the criteria adopted to promote a diversity of voices. As between two identical applicants, NFCB favors granting a new voice an opportunity to broadcast as opposed to an applicant who already has that opportunity.

Moody Bible and Houston Christian argue that broadcast diversity should not be a criteria for noncommercial educational broadcasters. Specifically, they argue that the Commission's decision in *Real Life Educational Foundation of Baton Rouge, Inc.,* 6 FCC Rcd 259 (1991) found that ownership of other NCE stations is "irrelevant" to a determination of whether one applicant would better serve the public interest than another applicant. Moody Bible comments at 8, n.9; Houston Christian comments at 8, n.8. NFCB endorses the thoughtful and detailed comments filed by Real Life in 1995, which demonstrate that the Commission cannot conclude that diversity of ownership

and control is irrelevant with respect to noncommercial educational licensees in light of the importance that the Commission has placed on diversity as a goal of broadcast regulation and the Commission's recognition that noncommercial stations are no less media voices than commercial stations. *See* Real Life further comments at 2 *citing* Real Life comments at 5-10 (filed April 24, 1995).

In addition, *Real Life* not binding upon the Commission in the context of this rulemaking. In *Real Life*, the Commission considered the comparative hearing standards established in *New York University*, 10 Rad. Reg. 215 (1967). *Real Life*, 6 FCC Rcd at 259. In this docket, however, the Commission is considering a replacement for the scheme laid out in *New York University*. Therefore, it is free, upon notice and comment, to alter those standards.[2]

C. Fair Distribution/Spectrum Efficiency

Many commenters set forth helpful suggestions with respect to the Commission's proposal to evaluate spectrum efficiency and the fair distribution of stations across various communities. NFCB supports the large number of commenters, including NPR *et al.*, Alaska Public *et al.*, Sound of Life *et al.*, and Colorado Christian, that argue that the Commission should not award credit to an applicant who proposes to provide the first service to a community because that criterion is subject to gamesmanship. NPR *et al.* comments at 23, Alaska Public *et al.* comments at 12; Sound of Life *et al.*comments at 12-13; Colorado Christian comments at 10. Adopting this criterion would allow

[2] In fact, parties participating in *Real Life* argued that significant changes in comparative standards should be made only after notice and opportunity for public comment, 6 FCC Rcd at 259, and the Commission concluded it would not alter the standards adopted in *New York University*. *Id*. at 260.

an applicant to obtain credit merely by selecting a minuscule community off a map next to a larger community that is the intended audience of the applicant.

NFCB supports several spectrum efficiency proposals set forth by NPR *et al.* NFCB supports NPR *et al.*'s proposal to award points to an applicant that proposes a major modification to its existing full-power facilities to improve technical service to its area. NPR *et al.* comments at 24. As NPR *et al.* explain, such a credit will encourage the efficient use of the spectrum. *Id.* NFCB also supports NPR *et al.*'s proposal to award points to applicants proposing replacement of a displaced translator to maintain an existing level of service. NPR *et al.* comments at 25.

NFCB opposed, in its comments, the Commission's proposal to favor an applicant that served 10 percent more population or geography than another applicant because this criterion does not accurately evaluate whether one applicant will serve a community better than other applicants. NFCB comments at 8-9. For similar reasons, NFCB opposes systems, such as those proposed by Colorado Christian and CSN International, by which the FCC would consider the available frequencies and determine whether it can reconfigure the applications to maximize the number of grantable licenses. *See* Colorado Christian comments at 17; CSN International comments at 7. NFCB opposes a proposal that might, on the basis of technical considerations alone, deny a license to the one applicant that is the most locally oriented and who will best serve the public. It is not necessarily more "efficient" to authorize three poor stations where the Commission could authorize a single high-quality station. If the Commission could authorize all applicants, however, such technical reconfigurations deserve consideration.

D. Tie-Breakers

NFCB agrees with CME *et al.* that a "finder's preference" should not be used as a tie-breaker.

CME *et al.* are correct that such a preference will favor applicants with greater resources who may easily file many applications. *See* CME *et al.* reply comments. Such a preference will also likely disfavor smaller stations that may provide higher quality service because they are more closely connected to the community.

SRG suggests that an unweighted tie-breaker be used to break ties. SRG comments at 19. If a statutory change could be obtained, NFCB would support an unweighted tie breaker only if the Commission adopts a thoughtful point system that adequately distinguishes among applicants. A point system that leads to many ties that must be broken by lottery is not very different from a lottery.[3] For this reason, the Commission should be extremely cautious in its use of lotteries if it does obtain statutory authority to use them as tie-breakers as part of a substantive point system.

Most commenters agreed with NFCB that the Commission must not require tied stations to share a license. For example, NFCB would like to highlight the comments of Colorado Christian, which emphasized the extremely negative results of a shared station. Colorado Christian comments at 17-18. Colorado Christian surveyed listeners of a potential time-sharing station and discovered that "a high percentage of listeners and potential financial supporters would be so confused by a time-sharing agreement that they would not financially support the pending station." *Id.* Commenters are almost completely unified in their conclusion that mandatory sharing is counterproductive and a waste of resources. *See, e.g.,* Jimmy Swaggart comments at 13-14 (explaining a shared station between two

[3] The D.C. Circuit made the same conclusion when it invalidated a hybrid point system/lottery that the Commission adopted to allocate ITFS licenses. *TRAC v. FCC*, 836 F.2d 1349 (1988). The court found the Commission's system to be a lottery under Section 309(i). Part of the court's justification for its decision was its conclusion that "deadlocks are made more likely by the limited point system employed to assess competing applicants . . . the Commission's scheme itself contributes to a greater need for a tie-breaker lottery." *Id.* at 1358.

religious institutions with opposing theological positions would not succeed); NPR *et al.* comments at 27-28.

III. The Commission Should Ensure Applicants Maintain the Characteristics that Lead to Their Selection and Should Not Adopt Proposals that Will Promote Speculative Activity.

Many parties supported, as did NFCB, lengthy holding periods for NCE licensees. NPR *et al.* for example supported a full eight year holding period, and several other commenters supported five year holding periods. *See, e.g.,* Sound of Life *et al.* comments at 16. NFCB encourages the Commission to adopt a holding period for the full license term.

NFCB strongly opposes Moody Bible and Houston Christian's suggestion to allow a licensee to donate its license to another non-profit. Moody Bible comments at 15-16; Houston Christian comments at 15-16. Allowing parties to donate licenses would be an invitation for applicants to engage in gamesmanship and coordinated activity to avoid disclosing the real party in interest. Contrary to Moody Bible's and Houston Christian's contention, allowing donation of licenses might encourage speculation. Under such a policy, a party might try to obtain a license that it doesn't want so that it can trade it for a license that it does want. Or, entities with no intent to operate a station can create "shell" non-profit corporations that will exist only to obtain a license and donate it to another party. Such coordinated activity is not a speculative danger. As SRG demonstrated in its comments, many individuals have coordinated their license applications.[4] SRG comments at 5-7 (describing, *inter alia*, a series of applications filed in the name of different non-profit corporations,

[4] Such behavior is particularly likely among licensees that do not tailor their programming to a particular community, but take their programming off satellite services. For them, a license in one town may be as suitable as a license in another town, and they would be willing to trade, for example, one outlet for two outlets.

all owned and controlled by one family). In addition, commercial applicants and licensees have long used complicated ownership schemes to subvert the Commission's rules.

NFCB supports Support Sound of Life *et al.*'s suggestion that transfers of construction permits be prohibited, and that if stations are not constructed, the permit automatically be awarded to the applicant with the next greatest number of points.[5] Sound of Life *et al.* comments at 16. Although this might not always favor an NFCB member, NFCB nevertheless supports this proposal as the fairest, and the speediest, allocation of licenses.

In addition to other certifications that NFCB proposed, *see* NFCB comments at 19-20, NFCB supports SRG's proposal that any applicant receiving credit on the basis of coverage be required to construct facilities as authorized and certify that it has done so during the holding period.

IV. The Commission Should Adopt Procedures to Verify the Factual Accuracy of Applications.

In its comments, NFCB suggested the Commission initiate random audits to verify factual accuracy of applications. NFCB comments at 20. Several parties agreed that the danger of misrepresentations is great unless the Commission verifies the characteristics claimed by applicants. For example, NPR *et al.* suggest that once a public notice identifying mutually exclusive NCE applications is issued, parties should have 30 days to submit documentation in support of their claims. NPR *et al.* comments at 29-30. SRG suggests that, after a tentative licensee is chosen, the chosen applicant be required to document all of its point allocation. SRG comments at 20.

NFCB fully supports these other more detailed methods of verifying the accuracy of applicant

[5] As NFCB has suggested with all licensees, the next applicant receiving a construction permit should be required to demonstrate that it continues to be eligible for its full point allocation. *See* NFCB comments at 19-20.

claims. NFCB believes that the Commission should adopt the strongest feasible methods of verification. As a representative of some of the smallest NCE licensees, NFCB believes that whatever burden additional document submission would place on applicants is fully offset by the increase in accuracy obtained by stronger verification methods. Increased verification improves the integrity of the Commission's process, and will reduce burdens in the long term as applicants discover that they will not be allowed to violate the Commission's rules.

If the Commission wishes to reduce the administrative burden on Commission staff, it need not require that the information be submitted to the Commission, but could instead require information to be sent to competing applicants. If the Commission takes this step, however, the Commission must ensure that this information is available to members of the public. For example, the information could be treated as the equivalent of a public file disclosure, and applicants would be required to send information to individuals making telephone requests as broadcasters are now.[6] *Main Studio and Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd 15691, 15702-03 (1998). Making information available at the outset of the process, as NPR *et al.* suggest, may reduce administrative burdens overall, because the increased availability of information will increase settlements between parties.

Allowing parties and individual members of the public to exchange information among one another, however, does not excuse the Commission from its own oversight responsibilities. Therefore, NFCB stresses that the Commission must take seriously any allegations of fraud brought

[6] The Commission would need to ensure that the public is informed of the availability of this information -- for example, the public notice identifying mutual exclusivity and triggering the information disclosure should have a boilerplate paragraph informing the public of their ability to obtain relevant information the steps an individual must take to do so.

to its attention. NFCB also encourages the Commission to adopt a system of random audits to verify licensees' certifications regardless of whether it also relies upon information exchanges between competing applicants and members of the public. Finally, if the Commission ceases to use petitions to deny as its primary oversight vehicle, it must improve citizen access to any replacement procedures that it may institute. A new system, with improved citizen access, may be an improvement over the current system.

NFCB also supports Sound of Life *et al.*'s suggestion that funding sources be disclosed as part of application process. Sound of Life *et al.* comments at 11-12. Such documentation would substantiate the source of funding credit that applicants may receive.

While NFCB does not oppose Alaska Public *et al.*'s suggestion that the Commission open a settlement window once rules are adopted for currently frozen applications, Alaska Public *et al.* comments at 13, NFCB does not believe that such a window is necessary because parties are free to settle at any time, including after the adoption of an order in this proceeding. Further, NFCB opposes delaying, for any reason, the long-overdue allocation of licenses.

Conclusion

NFCB encourages the Commission to give the greatest weight to proposals that will ensure the listening public receives thoughtful, local programming; reject suggestions that will lead to speculation and gamesmanship; ensure that applicants maintain the characteristics that lead to their selection; and adopt a processing system that will detect fraud and assure the integrity of the Commission's processes.

Respectfully submitted,

Cheryl A. Leanza

Gigi B. Sohn

Andrew Jay Schwartzman

MEDIA ACCESS PROJECT
1707 L St., NW
Suite 400
Washington, DC 20036

Counsel for NFCB

March 15, 1999