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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	MM Docket No. 91-
	)	
Reexamination of the Comparative Standards for Noncommercial Educational Applicants	)	

To: The Commission

REPLY COMMENTS OF ELGIN FM LIMITED PARTNERSHIP

1. Elgin FM Limited Partnership (Elgin FM), licensee of commercial broadcast Station KKLB(FM), Elgin, Texas, submits the following reply comments in the above-referenced proceeding.

2. First, Elgin FM reiterates its comments of January 28, 1999: (a) noncommercial entities (NCEs) should be precluded from applying for nonreserved allocations as NCEs have already been afforded reserved FM channels on which to apply to the exclusion of commercial entities such as Elgin FM; (b) to the extent the Commission has in the past permitted NCEs to apply for nonreserved allocations along with commercial entities, the comparison of which was made in the course of a comparative hearing proceeding, if NCEs choose to file applications proposing operation on nonreserved channels, such participation must continue to be subject to the same rules which have been applicable to commercial entities seeking such allocations.

3. Not surprising, initial comments submitted by NCE Houston Christian Broadcasting, Inc. (HCBI) take a position contrary to Elgin FM. HCBI states that NCEs should be able to continue to apply for nonreserved allocations and that where a noncommercial applicant and commercial applicant have filed mutually exclusive

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applications for the same nonreserved allocation, the noncommercial applicant should be afforded an automatic preference where no reserved channel is available. According to HCBI, all NCE applications would be processed and all commercial applications for the same frequency dismissed. Period. HCBI Comments, pp. 16-18. For obvious reasons this position is without merit.

4. On the basis of fundamental fairness alone, there is no good reason to award HCBI or any other NCE an automatic preference. As it stands now NCE entities are afforded rights exclusive of commercial entities to apply for allocations in the reserved band. To the extent that reserved channels are not always available in a given market, so be it. New channels are not always available to commercial entities either. Moreover, a NCE such as HCBI can hardly be heard to complain where it already owns several AM and FM stations and has several applications for new facilities pending. See HCBI Comments, pp. 2-3.

5. To hold otherwise would also permit the abuse of the application process. The previous comparative standards in selecting the most "qualified" applicant among mutually exclusive proposals were often the subject of abuse and are now gone. The establishment of an automatic preference as requested by HCBI would clearly result in a new class of sham applications. Many entities could be formed which state they are "non-profit" and thus satisfy the Commission's standards and yet not be a respectable NCE as say a governmental/educational entity consisting of a school district or community college. Absent a bona fide certification process by

the Commission of NCE applicants, entities may be established satisfying the Commission's current standards for qualification in order to avail itself of the benefits proposed by HCBI. Whether or not this potential for abuse is great, HCBI has failed to present a valid reason as to why even respectable NCEs should not be limited to the reserved FM band. With the migration of television to digital status, many opportunities previously foreclosing NCEs from being able to seek a reserved channel will open up. Under those circumstances, it may still be appropriate to give NCEs a "first crack" at securing the channel. Where a nonreserved allocation is involved, however, all applicants, regardless of noncommercial or commercial status, should be treated equally and be subject to the same rules in seeking an allocation on a nonreserved channel. This has been the Commission's practice for years and nothing in the Commission's proposed auction rules or the mandate of the Telecommunications Act of 1996 dictate any good reason to depart from such practice.

6. As previously noted, HCBI's ownership and operation of several radio stations demonstrates that there is no shortage of NCE applicants, permittees or licensees. Unfortunately, the same cannot be said for minority or female applicants. If the Commission is determined to promote growth in areas of the population where it believes there is an underrepresentation of participation such as it has determined with minority and females in the ownership and operation of broadcast facilities, it is equally clear that it should not take action as requested by HCBI where

there is ample ownership and operation by the NCE community of radio and television facilities. By implementing standards that stymie participation of commercial entities, including many owned by minority and female participants, in the nonreserved band, the Commission would be taking action which is clearly contrary to the public interest and counterproductive to its stated intent to foster growth of those parties severely underrepresented in the ownership and operation of broadcast facilities. This it must not do.

Respectfully submitted,

ELGIN FM LIMITED PARTNERSHIP

By _____
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March 15, 1999

CERTIFICATE OF SERVICE

I, Jose Jaime Garcia, Jr., on behalf of Elgin FM Limited Partnership, do hereby certify that on this 15th day of March, 1999, I have caused a copy of the foregoing *Reply Comments* to be served by first class United States Postal Service mail, postage pre-paid, on the individuals listed below:

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