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

In the Matter of	)	MM Docket No. 99-25
	)	
Creation of a Low	)	RM-9208
Power Radio Service	)	RM-9242

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To: The Commission

COMMENTS OF THE NATIONAL FEDERATION OF COMMUNITY BROADCASTERS

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0. Introduction

National Federation of Community Broadcasters ("NFCB") submits these Comments in response to the Commission's Notice of Proposed Rule Making released on February 3, 1999.[1] NFCB is a grassroots organization of non-commercial, educational public radio stations, with some 200 Commission-licensed broadcast stations and other radio organizations and public telecommunications entities among its members. In large communities and small, our membership is characterized by community participation, support and control, and by program diversity, reflecting the range of races, creeds, cultures, political concerns and interests of the local service area.

In concept NFCB is happy to and does here voice its support for the creation of some type of new Low Power FM Service, with two major caveats. First, such new service must not result in any serious pattern of service losses by existing stations, whether NFCB member stations or other noncommercial or commercial stations. Secondly, this initiative must be understood as but a step -- not as a comprehensive

[1] The deadline for Comment was extended until August 2, 1999, by Order released on May 20, 1999, FCC 99-112.

remedy -- in addressing the increasing need for new media outlets. It is possible, as suggested by Commisioner Furtchgott-Roth's dissent here, that this proceeding will do nothing to remedy the lack of racial and ethnic diversity in broadcasting. Those efforts, and the effort to preserve access to mass media generally must continue elsewhere.

1. NFCB Supports the Creation of a Low Power FM Service

A. Large Unmet Demand for Radio Exists

In large urban areas the entire FM radio spectrum has been saturated for many years. The Commission's comparative hearing process had the effect of encouraging applications, not where vacancies existed but where other applications existed. A prospective broadcaster received no benefit from identifying an available channel locally and applying for that channel, because the application would draw competitors, and the applicants then would be thrust into time-consuming, costly and debilitating comparative hearings. After the first Bechtel decision in 1992, the Commission essentially threw up its hands, and refused for several years to designate applications for hearing or to process applications requiring comparative consideration of any kind.[2] It has searched for a more sensible means of processing applications, and that search is nowhere near an end.

The 1996 Telecommunications Act, Sec. 202(a), removed cross-market limitations on radio ownership. The marketplace has responded by creating a few national groups with hundreds of stations. In the process, prices for existing stations have skyrocketed. Those not having radio ownership already have faced an increasingly high hurdle of cost and financing to acquire stations.

B. Noncommercial Services Have Not Kept Pace

Even though consolidation made entry harder, some of its benefits have been

realized. Commercial radio stations are being operated more efficiently. As an advertising medium they have become remarkably effective. But as the revenue received by commercial stations grows rapidly, the noncommercial sphere is not keeping pace.

Appropriations to the Corporation for Public Broadcasting for established stations and to Commerce Department's NTIA to assist the development of new stations and for service extensions have stagnated. In recent years noncommercial radio stations have enjoyed strong public support, and audience and donations have made advances. But the inability to create or expand fresh FCC- licensed services prevents growth in response to the growth of population and national income. Despite sincere efforts in many localities, public broadcasting has not been able meet the swelling demand from ethnic and language groupings, who were underserved already.

C. Since 1991, the FCC's Authorization Process has Aggravated the Problems of Noncommercial FM.

Long-standing Commission policy provides that a primary commercial FM station may not provide financial support to an FM translator outside the primary station's primary service contour, Sec. 74.1232(e) of the Rules and Regulations. Nor may the commercial FM primary become the licensee of a distant translator, Sec. 74.1232(d). Until a few years ago, the fact that this restriction applied to commercial FM's, but not to noncommercials, was an immaterial difference.

Effectively October 1, 1992, the Commission abolished the former rule that restricted noncommercial FM translators from entering distant markets (Sec. 74.1231(b)(1)(iv)). It further provided, expressly, that the FM signal could be delivered to an FM translator using "alternative signal delivery" including "satellite," (Sec.

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2 *Bechtel v. FCC*, 957 F.2d 873 (D.C. Cir., 1992).

74.1231(b). These changes applied only to applicants seeking authorization in the reserved, noncommercial band. The effect of the changes was dramatic -- a small avalanche of FM translator filings, virtually consuming all available space in the noncommercial band.

It might be assumed that this new wave of FM translators, being secondary facilities, would pose no obstacle to the continued growth of full service public radio in the FM reservation. But sadly, in practical effect, full service noncommercial FM growth has been virtually halted. An FM translator licensee, facing displacement from a new full service proposal, has been free to file a mutually exclusive application against such a proposal, at a time when the Commission has no means of resolving application conflicts.

More recently, the trend of noncommercial mass filers has been to apply for 100 watt minimum full service FM facilities, with satellite feed, and to seek waiver of the main studio rule (Sec. 73.1125). The Audio Services Division has adopted a liberal policy of waiver in such instances, all but encouraging non-originating cookie-cutter applications, entitling the filer to a permanent occupancy of every remaining scrap of the reserved noncommercial band.

These policies since 1991 have done more to change the situation for noncommercial broadcasting than any other factor during these years. The policies have been damaging to public and community radio and have seriously interfered with our effort to broaden service and pursue our mission. The policies have major implications for this proceeding, charting a number of latent opportunities for new service that the Commission has not exploited fully, and elsewhere showing pitfalls to be avoided.

D. Planning factors for a new Low Power FM service.

We do not minimize the need and demand for new commercial FM spectrum, where the top 50 markets have been saturated for many years. But the spectrum needs of noncommercial FM, and of the communities it seeks to serve with new and expanded service, are more acute.

In commercial radio broadcasting, entry to ownership remains possible, because small market FM stations, AM stations, and AM daytimers have not been part of the consolidation process and their prices have not seen the same rapid advances as are evident with more strategically positioned stations. The need for a commercial LPFM service, as a sort of FM station with training wheels, for the development of new talent, has not been shown, and alternatives are readily available. Any new commercial stations created now would have to be authorized through a process of competitive bidding -- a liability that existing stations never had. Accordingly, new commercial LPFM opportunities would be unlikely to provide an entry path that would even equal the possibility of access to lesser facilities now existing on the open market.

In noncommercial radio broadcasting, the goal is not ownership. Rather the overriding objective is community service, through new and distinct program offerings. Here there is a service gap that can be filled, promoting diversity in and of itself. To the degree that new stations involve persons of diverse background and viewpoint, who then garner valuable experience, such a point of entry will strengthen broadcasting as a whole.

These factors point to the creation of a new, noncommercial only service. In fashioning the rules for such a service, the Commission should be centrally concerned with stepping back from its ill-conceived liberalization of the FM translator rules,

permitting satellite feed with no studio. *De facto* that change created a currently existing and fully operative low power FM service, but one possessing no local service or other tangible public benefits. From the standpoint of noncommercial service providers, unless the existing permissible service criteria are re-examined, no purpose would be served by creating a new LPFM service, because such service, in a corrupted form, already exists in the noncommercial band.

2. **Historical background**

A. Noncommercial radio reforms of 1978 - 1980

NFCB was instrumental in developing and advocating the rules changes that created the 100 w minimum power limit (see Sec. 73.211(a)(1) of the Rules), and eliminated protection for the old "Class D' or "ten watter" services (see Sec. 73.506(b) and Sec. 73.512 of the Rules). We do not agree with those micro radio advocates who have criticized these measures. The noncommercial band always lacked a Table of Allotments. Frequencies were awarded first come, first served. In many large communities, no community radio station, or no second or third station, with e.r.p.'s up to 50 or 100 kw, could be started, because of the preclusive effect of 10 watt stations, some of which were purely instructional and operated only in daytime or other limited day parts. But for the rules changes adopted by the Commission in 1978, downgrading the standing of the old 10-watters, community radio and NFCB itself would not have developed the strong and varied public service offerings we see today.

B. The FM Allotment Revisions (BC Docket No. 80-90)

From 1983 - 1984, the Commission revised the commercial FM service categories, to add new classes of service, to tighten interference protection, and to add

roughly 700 FM channels to the Table through an omnibus proceeding.[3] That initiative is worth recalling at the threshold of the proposed new LPFM. The refined classes of service (with more nuanced station separation criteria) enabled many more stations to enter the commercial band, through the channels added to the Table in an omnibus proceeding. The noncommercial reservation did not receive the same benefit, because it lacked any counterpart for the Table or the new service classifications (by power level) that facilitated better "packing" of the band. So during the 1980's at least some of the pent up demand in the commercial sphere was addressed, but the structure of the noncommercial band remained largely as it was.

[4]3. **Eligibility Questions**

The Commission appears to recognize that, without some guidelines shaping eligibility, a new LPFM service would tend to resemble the existing services, and would make little difference. Indeed, without guidelines, the LPFM initiate might constitute a nothing more than a miniaturized and limited-impact version of the Docket 80-90 expansion, some 15 years later. For these reasons, the core choices on eligibility are among the most important to be determined here.

A. Noncommercial only. A fundamental question in this proceeding is whether the entire service should be non-commercial or mixed commercial and noncommercial. NFCB favors a noncommercial only approach. As we discussed, a noncommercial-only service better comports with the community service concepts and diversification goals that appear to be behind the FCC initiative.

B. Local cross-ownership. The Notice would deny eligibility to local

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[3] Report and Order, FCC 83-259 released on June 14, 1983, 53 RR 2d 1550, 48 FR 29486.

broadcasters having an "attributable" interest. Traditionally, noncommercial interests are non-attributable. NFCB suggests that existing noncommercial FM licensees be able to apply locally. (Where there was more than one applicant, an existing station would need to commit itself to originate programs, and not use the new station as a translator, or its proposal could not be the one preferred.) [Station priorities versus FM translators are discussed infra, at 5C.]

C. Eligible applicants. Eligible entities would be "public telecommunications entities" as that is defined in the act. It is possible that an informal grouping, such as an unincorporated association, would be able to qualify, but it would need to maintain a separate and distinct entity for accounting purposes. Simplicity and ease of application are desirable, but a true non profit should not be run out of someone's back pocket (or checkbook) without a means of verifying its non-profit bona fides.

D. Former Extra-legals. Extra-legal broadcasters generally should be eligible to apply. The Notice intimated that the Commission would give favorable consideration to extra-legal broadcasters who ceased operation after publication of the Notice (¶67). This provision was equivocal, and was not highlighted or publicized. This proceeding creates a one-time-only opportunity for a full amnesty program. Extra-legal broadcasters who terminate operations within 30 days of publication of the Report and Order in the Federal Register should be considered fully eligible like any other applicant. There is strong precedent for such an approach, in the 1960 grandfathering of extra-legal TV

translators and boosters, in that instance by Statute.[5] Upon a proper showing of compliance with the amnesty, all pending proceedings in court or at the Commission should be terminated. Amnesty relief should not be available to extra-legal broadcasters where there is documented evidence that such a broadcaster has created destructive interference. Such evidence would presumptively raise an issue of basic qualification, under established standards for broadcasters who need to possess the requisite character to become Commission licensees.

E. Local residency. While NFCB endorses the Commission's overall approach of minimum regulation, we do believe that a local residency requirement is appropriate. The Commission analyzes ownership of noncommercial entities by looking to the composition of the governing body. We recommend that, to be eligible for filing, a majority of the members of the governing body have their permanent, primary and legal residence within the primary service contour.

F. Limit of One. Eligibility should be limited to one station -- one to a customer. This single rule is the most important tool in deterring any feared avalanche of competitive filings. The Commission could choose in the future to relax such a rule, toward multiple ownership, for example the five-station benchmark suggested in the Notice (¶60). Multiple ownership rules almost never can be made *more* restrictive, and the sensible approach would be to start with the most cautious allowance, and make adjustments later if that is appropriate.

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[5] Pub. L. 86-609, 74 Stat. 363, July 7, 1960, authorizing the licensing of extra-legal boosters and translators as an express exception to the construction permit requirement of 47 U.S.C. Sec. 319(d). Subsequent changes have empowered the Commission to waive the requirement of a CP prior to construction, after a public interest finding.

4. **Permissible Service**

A. No Local Origination Requirement

The FCC has not proposed, and NFCB opposes any restriction on the use of programs from any suitable source, including satellite feed. This issue was examined in the LPTV proceeding, where any such restrictions were viewed as unworkable. Any such standard also inserts the Commission into the sensitive area of program content. For reduced power facilities, the by-word should be less content regulation, not more.

LPFM's will need and should have the ability to develop their own network arrangements and to share the cost of high-quality regional or national programming. Networking historically has been a key factor in the growth and prosperity of commercial and non-commercial radio broadcasting alike.

B. New Underwriting Guidelines

NFCB does see a role for the Commission, in revising its content-neutral and speaker-neutral underwriting guidelines. Current underwriting guidelines are based upon statutory language which does not forbid paid advertising solicitations for non-profit entities, 47 U.S.C. Sec. 399B(a)(1). However, the Agency clearly has jurisdiction and power to go beyond this, and fashion appropriate public interest policies.

In this new service, the Commission should consider banning all advertising solicitations, for commercial and noncommercial entities alike. Such a rule would not prevent underwriters from giving support and receiving acknowledgement in the normal way, provided that the proceeds of such underwriting remained dedicated to station support. But stations should be forbidden to remit the proceeds of fundraising to related or unrelated third parties. Where a non-profit entity obtains a license for LPFM, and is

engaged in other related or unrelated businesses, it should be required to maintain separate accounts, and to furnish to the Commission upon request with evidence that all proceeds of its station fundraising have been retained by the station, as a separate accounting entity, for stations purposes. These rules would not be intended to prevent disbursements in the normal course of business, i.e. for equipment suppliers, networked program services, or other disbursements. But aside from bare underwriter acknowledgement, any actual or disguised solicitation for the benefit of such third parties would be closely scrutinized.

The Commission has extensive experience in administering regimes of separate accounting, both in common carrier regulation and in mass media (cable television). In practice, the procedure can be largely self-enforcing. The applicants would certify that the applicant (non-profit corporation, unincorporated association, or non-profit partnership or venture) has a separate checkbook and can and will maintain separate accounts, available for Commission inspection. And repeated violations of the third-party identification rules obviously can be detected and reported by any listener.

The fundraising, accounting and solicitation rules that we propose are content-neutral, and should be easier to administer than any criteria that focus on residency or program sources. Strictly applied, these rules will assure that the station is operating to provide a service to its service area, and for no other purpose. Equally important, by announcing these policies at the start, the Commission can make a clear statement that it intends this service to be especially effective in providing community service. Fundraising that supports such service and the station itself is to be encouraged. The use of stations in furtherance of an extraneous business agenda will not be

reconcilable with that goal.

5. **Service classifications and Power Limits; Spectrum Priorities**

A. Three Power Ratings, Within One Primary Service Class

. NFCB supports the creation of a single, unitary LPFM service, primary not secondary (with certain conditions), and three classes of service: LP1000, LP100, and LP10. The choice of power level should be left to the assessment of local market conditions and sound engineering practice of the applicant. The Notice proposes LP1000 as a primary, and LP100 as a secondary service. However, there is no reason to preclude primary service for LP100's, especially in rural areas where spectrum is plentiful and primary service may facilitate fundraising and development. The crucial distinction should be based upon market size.

No LP1000 application should be acceptable in any county identified by Arbitron as among the top 25 markets. In these markets, very few new services are possible, and application conflicts are the most likely. The emphasis should be on spreading opportunities are widely as possible. Indeed, we are open to the possible approach of making the top markets LP 10 only, with no LP 100 stations permitted.

No applicant should receive a preference for more coverage or a higher service category (LP1000 -- LP100 -- LP10). Rather it should be assumed, given that all of these facilities are comparatively "low cost," that an applicant will seek the highest service level that will fit from an engineering viewpoint and be optimal to serve that community.

B. Existing Terrestrially Fed FM Translators Should be Fully Protected.

In many rural areas, particularly those with mountainous terrain, FM translators are a vital part of the extended service being provided by local FM stations. Those with

terrestrial feeds are invariably in, or at least near the service contour of the primary.

Satellite fed FM translators should be required to yield right-of-way to new LPFM's, and be accorded no protection. These facilities do not deliver a local program service, and do not possess any public interest value great enough to outweigh the inauguration of new local service. They would be afforded displacement relief, to move to another channel or modify facilities without encountering competing applications, under established procedures. (This recalls NFCB's initiative during the 1970's to remove protection from the 10 watters.)

To secure protected status for terrestrial-feed translators, the licensees would be required to forward a simple checked-block notification, whereupon they would be flagged as protected in the FM engineering data base. This opportunity should be announced and made available, prior to the acceptance of LPFM applications.

C. <u>All new LPFM's must protect for the future rollout of IBOC</u>.

. NFCB agrees that a new LPFM service could not rationally be implemented, if it were known to threaten serious adverse impact to In Band on Channel (IBOC), at least as long as the Commission regards that as the prime method of addressing the mounting demands for new radio services. IBOC is still in the formative stages, with proceedings pending at the FCC and some, but not all field trials completed. All LPFM authorizations should bear an express condition, stating that they will be required to modify facilities or cease operation, should that be necessary as the result of rules the Commission may adopt looking to IBOC authorizations. (In that condition, and only it, LPFM would be "secondary.")

It has been and remains well within the Commission's ability to inaugurate new

digital radio service, with the allotment of separate spectrum. The entire FM band, 88 MHz to 108 MHz is the equivalent of only three and a third conventional 6 MHz television channels. Meanwhile, the Commission is in the process of eventually freeing up the bands from channel 60 to 69 and channel 51 to 59, or enough bandwidth to replicate the conventional FM band more than five times over. The only reason that digital radio is not receiving its separate allotment in the United States is opposition of the established broadcasters, based on their reluctance to permit new entry. The existing broadcasters' insistence that IBOC must have precedence over any LPFM new entry must be viewed in perspective. IBOC protection, and rapid deployment, are worthy goals. From the public interest viewpoint, they are not absolute.

It also is worth noting that no existing radio receiver is capable of receiving IBOC. Rather, all such receivers will be manufactured in the future, once a standard has been adopted through the Commission's processes. We face a golden opportunity, where the balance can and should be tipped in favor of more service offerings to the public, even if that requires a more rigorously engineered radio receiver (but well within the state of the art). In this sense, the insistence that LPFM not "interfere" with IBOC presents something of a moving target. The present is exactly the most propitious time, when the Commission through wise planning may keep the interference problem to a minimum. Field tests showing predicted interference to existing services, using poor-quality receivers, contain a double bias. All receivers will be replaced eventually, as the IBOC hybrid era draws to a close. Poor receivers are exactly the ones likely to go first.

Our recommendation of a condition of non-interference to IBOC is intended to assure that the proceeding not be delayed while IBOC engineering studies continue. We

believe it will prove ultimately unnecessary to extinguish many, or any LPFM authorization, to bring IBOC to full realization. It is only in the most congested markets, where the LPFM opportunities are few to begin with, that the Commission is likely to need this authority to modify selected facilities.

Our members stations look forward themselves to being able to provide digital services through IBOC. Our members need assurance that they will be able to secure full replication of their existing services, for the hybrid stage and onward into full IBOC implementation. LPFM, desirable as it is, cannot jeopardize that goal.

6. **The Authorization Process.**

A. Basic Precepts

As stated in the Notice, some of the traditional means of processing applications have been modified by express statutory law. As the result of the Balanced Budget Act of 1997, competitive bidding generally is required for commercial broadcast applicants; and is forbidden for noncommercial broadcast applicants, Notice ¶104. Concurrently, the Commission's authority to make commercial authorizations by lottery has been revoked, Id. These constraints are one of the reasons that NFCB advocates a noncommercial-only service.

The Communications Act gives the FCC an obligation "to continue to use engineering solutions, threshold qualifications, service regulations and other means" to avoid application conflicts, 47 U.S.C. Sec. 309(j)(6)(E). We believe the Commission can go much further than its Notice actually does to implement this requirement. The Commission's baneful experience with oral, evidentiary hearings matches with the Congressional recognition that all reasonable effort should be taken to smooth

authorizations.

Congress has mandated that any future noncommercial lottery grant a "significant preference" to "any applicant controlled by a member or members of a minority group," 47 U.S.C. Sec. 309(i). This Delphic command arises in a vacuum, and without the detailed evidence of discrimination and other foundational work that would enable it to survive Constitutional strict scrutiny in the Federal courts, *Adarand Constructors v. Pena*, 515 US 200 (1995). This unfortunate, almost classic "Catch 22" suggests that the FCC should bend every conceivable effort to removing mutually exclusive ("MX") application conflicts, before they fall into the morass of a disputed lottery mechanism, no matter how well-intentioned and well-crafted.

B. Measures to Limit the Volume of Applications

The single most important limitation, protecting against an avalanche of applications, is a multiple ownership rule. This lends additional support to our recommendation that one-to-a-customer be the starting point. As experience is gained it may be appropriate to relax the standard. But without knowing the scope of demand, and filings, a cautious approach is best at the start. Only one station should be allowed in common ownership.

Also in the interest of containing the incoming tide, NFCB strongly supports the imposition of a modest "processing fee" for all new LPFM applications. Experience with the LPTV roll out showed that many, if not most of the speculative abuses in the application process were curtailed when the Commission imposed a small filing fee in 1986 (at the time, $125.00). It is expected that most applicants in this service, if adopted in the manner we propose, would not be able to establish formal exemption from fees

under the rules, as qualified public telecommunications entities or as IRS 501(c)(3) exempt organizations, see 47 C.F.R. Sec. 1.1114(c) and (e) of the Rules and Regulations. Yet it would be inequitable to charge a fee for some, though not all applicants. We recommend a modest processing fee for all applicants without discrimination, for example LP1000 and LP100, $250.00; LP10, $50.00.

A "window filing" approach has been used with translators and low power television for some time. Under this approach, the Commission issues a public notice stating that applications will be received, beginning on "[date]" and ending on "[date]". All applications in the filing group are accorded co-equal status for purposes of determining mutual exclusivity. Under this approach, one could say that a *filing freeze* is the default, and window periods are pre-announced exceptions to the freeze. While the Notice herein indicates a willingness to adopt window filing, it also appears to recognize the significant danger of disruption and delay in that approach, Notice ¶¶96-102.

The Commission is concerned that a short window may trigger a "flood" of applicants, Notice, ¶97. That certainly was true with the LPTV window ending on March 31, 1981, when some 5,000 new applications were submitted, creating a backlog that required the work of several years to process. (As mentioned, filing fees and numerical limits both would have lessened this crisis had they existed at the time.)

One way to moderate the now-or-never mentality that leads to over-filing would be to use the published deadlines only as cut-off dates for determining MX groups, while keeping the "window" open for filing at all times. For example, it would be announced that all applicants filing before the last day of February would be considered as having equal priority for processing; the same way for those filing by the last day of

April; same for last day of June; same for last day of August; and so on. But no filing freeze ever would be imposed.

The worst feature of traditional windows is that they deprive the FCC of any knowledge as to the pent-up demand they are creating as a result of the ongoing filing freeze. The windows endure in the interest of administrative convenience and despite public demand for service.[6]

With a new LPFM service, the danger in a window approach is that the FCC, taking nothing from past experience, would announce a one-time "stealth window" hoping that the bare minimum of advance notice would deter some applicants. One week after the close of the window, the FCC would announce ruefully that its hopes had been dashed and that thousands of LPFM applications had been received, necessitating months and months of processing for the routine electronic filings, and years for the applicants having any non-trivial complication.

If the FCC decides to ration filing opportunities, it should not do so with windows, but should permit a continuing flow of filings, permitting the Commission to estimate the level of demand on a recurring basis. For example, filings could proceed from rural to urban, based on the proposed LPFM transmitter being located in a group of Arbitron radio metros, starting with 101 and below; 51 to 100; 26 to 50; 11 to 25; and finally the top ten markets. As a new area became eligible, all previous areas also would remain open, permanently.

C. Measures to Remove Application Conflicts

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[6] With translators and LPTV, the last opportunity for filing a new application was the window period of April, 1994, more than five years ago. With DTV approaching, the FCC said it had decided not to entertain any new applications at the last LPTV window, and a window for major changes, only, was provided in April/May of 1996.

The elimination of application conflicts, before the FCC must resolve them, is perhaps the thinnest part of the Commission's analysis of authorizations. As stated, NFCB believes it is crucial. A first-come approach, Notice, ¶¶ 99-100, obviates conflict situations, almost by definition. However, the Commission has not fully perfected its processes of electronic filing. Until it does so, automated procedures -- used to determine important substantive legal rights -- may be dangerous. They may lead to anomalies which, to the disadvantaged applicant, will seem like gross injustices. And unless the errors are confined to very few instances, they may force the entire authorization process to a halt, while defects are isolated and corrected.

Under a filing window approach, at the close of a stated filing window period, all substantially complete applications would be afforded cut-off protection. Up to a specified amendment deadline, applicants would be permitted to remove conflicts by modifying facilities, as a minor change, without encountering new competing filings. NFCB submits that much more could be done here to remove conflicts. Some examples:

- The Commission could provide by rule that channel changes and coverage changes within some defined limit will be treated as minor changes, enabling conflicting applicants broadly to amend to avoid conflicts.

- With electronic filing, applicants could be invited to specify additional channels as "back ups" that the Commission would assign automatically, where the first choice created a conflict.

- As is the established practice with international short-wave applications, the applicant could submit a proposal without a frequency for its output, and the Commission could assign the operating frequency in concert with its computer analysis of interference.

- The Commission can and should adopt a prohibited contour overlap processing system, instead of the spectrally inefficient minimum distance approach, Notice, ¶40. Once a computer program is established for contour overlap, it is not, as the Commission appears to suppose, "resource intensive." Moreover, the ability to create computer programs for such purposes have improved greatly since the original LP-One program was written for low power television back in the early 1980's. Even if

contour overlaps do impose an additional resource cost, it is worth bearing if, as we believe, it will expand the openings for possible new service in congested markets.

- Where two or more applicants are in conflict, they should be permitted mutually to waive claims of harmful interference between themselves, with or without curative amendment, without any *a priori* guidelines for such waiver. If the applicants are willing to construct under those conditions, and take their chances, the government should not forbid them.

D. Measures for Resolving Contested Cases

There will be instances where none of the above measures, or possibly others that might be devised, will be effective in resolving the contested case. NFCB opposes the use of paper hearings or of point-systems to remove application conflicts. This is in contrast with the position we took in the proceeding addressing such licensing for noncommercials generally.[7] He, we are apprehensive that any paper hearing may prove time-consuming and unwieldy. All applicants complying with the eligibility standards, technical rules, and underwriting restrictions that we propose would be providing a valuable, new local service. It would be preferable to enable all applicants to begin some type of service. For this reason, we advocate contested cases being resolved by splitting the license term into equal blocks of years according to the number of applicants in the mutually exclusive group. A first-come filing date might be utilized to decide which applicant could obtain the earliest authorization. Or, for this purpose alone, a higher power proposal might be favored. As the last resort, a lottery, not inconsistent with Congressional directives, will need to be utilized.

7. Technical Standards, Interference

NFCB anticipates that several parties will be making detailed engineering submissions. While not offering our own engineering analysis here, we reserve our

opportunity to make detailed comment during the Reply phase. We do support the requirement that type approved transmitter equipment be employed for this new service.

As existing licensees, NFCB members would prefer never having to confront new services that might interfere with our audience or generate complaints about disrupted coverage. But in the interest of seeing better service to under served communities, we need not and do not adopt an absolutist approach to interference. We commend the separate statement here by Commissioner Ness, with the focus of her concern on "undue" interference. Similarly, the statement by the Chairman and Commissioner Tristiani recognizes the need to balance "technical integrity" and the promise of "new technology."

In this quest for balance, the Commission can do no better than to remember the record, its analysis in light of the record, and its actions in the landmark Docket 80-90 proceeding, supra fn. 4.[8] The Commission in 1983 made difficult choices, but chose rightly in favor or increased service to the public. A standard rejecting any possibility of interference would have precluded this. Indeed, as the Commission noted then, many of the key rules and policies for FM, as adopted 20 years before in 1963, accepted "that certain amounts of potential interference-free service had to be discounted if a sufficient number of assignments were to be made," Report and Order, ¶30. NFCB members, as Commission licensees, do encounter interference problems and are concerned about future interference. We accept that sensible new rules for a new LPFM service will honor this concern, but also favor new service wherever that concern can be minimized.

8. Conclusion

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[7] Comments of NFCB, January 28, 1999, in MM Docket No. 95-31, Re-examination of the Comparative Standards for Noncommercial Educational Applicants.

[8] In that proceeding, ABC submitted a study by A.D. Ring, purporting to show that the 80-90 proposals would result in a net loss in service (see Report and Order, ¶28) -- a conclusion that today seems truly bizarre.

NFCB applauds the Commission for this initiative and generally supports the creation of a new LPFM service along the lines discussed herein.

To foster diversity and to avoid the creation of new interference, we believe sound engineering standards and strict ownership limits are appropriate. The new service should be noncommercial, only.

We recommend that eligibility be limited to entities whose governing board has a majority of local residents. We oppose any other ornate local employment or content restrictions. We do believe however, that strict new underwriting criteria are essential.

To the degree that the Notice rationalizes this service as a means of fostering diversity, particularly racial and ethnic diversity, we offer a note of caution.
Public radio and community broadcasters in particular have been instrumental in creating opportunities for training, development and leadership of minorities in broadcasting. We cannot cease from these efforts and we implore the Commission to examine every other means to this end. This initiative is one piece of the puzzle. It is not the whole way there.

Respectfully submitted,

NATIONAL FEDERAL OF
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