

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)	
)	
Association of America's Public Television)	
Stations' Motion for Stay of Low Power)	
Television Auction (No. 81))	

COMMENTS OF
NATIONAL FEDERATION OF COMMUNITY BROADCASTERS

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Introduction and Summary

The National Federation of Community Broadcasters ("NFCB") respectfully submits these comments in the above-captioned proceeding. NFCB is the sole national membership, service and national advocacy organization for community radio. NFCB is a grassroots organization of approximately 150 noncommercial, educational, public radio stations, distinguished by their community support, control, and programming. As such, NFCB members demonstrate that compelling and essential radio can be offered to their communities often using volunteer staffs and lower than average budgets. NFCB members, therefore, present a unique perspective for the Commission, different from, but in harmony with, other public radio broadcasters.

NFCB endorses in large part the comments submitted today by National Public Radio (NPR) and the Station Resource Group (SRG). Specifically, NFCB believes:

- there is a critical need for additional spectrum for noncommercial educational (NCE) use,

- the Commission should allow NCEs an opportunity to reserve frequencies already designated for auction according to NPR's proposed reservation policy,
- precluding NCE applicants from the non-reserved band would be poor public policy and run contrary to Congressional intent,
- precluding NCEs from participating in auctions entirely is not appropriate,
- commercial applicants should be allowed to dismiss their applications on the condition that the frequency be reserved for noncommercial purposes, and
- Channel 6 should be reallocated for non-commercial radio as part of the DTV transition.

I. A Carefully Balanced Reservation Policy Will Reserve New Frequencies Under Limited and Appropriate Circumstances.

The Commission asks whether NCEs should be allowed to seek reservation of presently existing but vacant allotments and for future allotments. *Notice* at ¶¶ 16-18. NFCB supports, for the reasons articulated by NPR, that the Commission allow NCEs an opportunity to seek a reservation for the vacant allotments currently included in auction number 37. *See NPR Comments*. NFCB supports the Commission's proposal that an NCE applicant demonstrate that the NCE is technically precluded from using a reserved channel, *Notice* at ¶ 15, and that no other non-reserved channel would serve at least 50% of the proposed service area, *Notice* at ¶ 18.

While the Commission expresses concern for those parties who participated in the allotment proceedings, *Notice* at ¶ 18, no applicant is guaranteed success in the auction, and thus all participants risk losing the allotment to another party. Moreover, NPR's proposal is limited in scope. As the NPR technical analysis showed, only 4 of 25 stations analyzed would be removed from the auction. **II. Precluding NCE Applicants from the Non-reserved Band Would be Poor Public Policy and Run Contrary to Congressional Intent.**

The Commission proposes, in Option # 1, to preclude all NCE applicants from non-reserved

spectrum. *Notice* at ¶ 11. As NPR explains in detail, an FCC decision to preclude NCE applicants from non-reserved spectrum would turn the Congressional policy exempting NCE stations from auction on its head. Long-standing Congressional policy supports the extension of public broadcasting. An exemption for non-commercial broadcasters favoring their receipt of spectrum at no cost is inconsistent with a decision to deny them access to spectrum at all. It is not likely the FCC could justify such a drastic change in federal policy. The D.C. Circuit's decision in *NPR* did not address this issue, and does not stand for the proposition that such an outcome would be allowed.¹

III. The Commission Should Not Preclude NCEs from Participating in Auctions.

Although NFCB does not believe that non-profit entities should be *required* to participate in an auction, NFCB believes that non-profit entities ought to be *allowed* to participate in an auction. NFCB strongly opposed the Commission's decision to require NCE applicants to participate in auctions on non-reserved spectrum because most of NFCB's members will not be able to successfully participate in an auction. Most of NFCB's members will not have the financial resources to prevail over commercial applicants and large non-commercial applicants in an auction, let alone raise funds for an opening bid. Nonetheless, it is *possible* that some non-commercial broadcasters, including some NFCB members, will be able to raise sufficient funds to participate in an auction. A non-commercial broadcaster might overcome the significant hurdles of raising revenue, securing loans, obtaining listener support and possibly other grant funds to participate in an auction. If it did so, there would seem no public policy reason to prevent the non-commercial broadcaster from bidding along with other

¹ It is true that one judge mentioned the possibility that the FCC would preclude NCEs from non-reserved spectrum in the oral argument of *NPR*. However, this issue was not briefed by any party before the court. Thus, the statement is conjecture by one judge who did not receive the benefit of legal analysis on the particular point.

applicants.

Thus, although NFCB strongly believes that most of its members will be unable to participate in an auction and thus oppose an effort to require NCE entities to participate in auctions, NFCB also believes that any NCE entities that are able to participate should not be barred.

In regard to this question, the FCC seeks comment on whether the statutory exemption in Section 309(j)(2)(C) applies to all “nonprofit educational organizations” or only to such organizations when they make a “showing that the station will be used for the advancement of an educational program.” *Notice* at ¶ 9. NFCB agrees with NPR that a NCE applicant must be *both* a non-profit educational organization *and* demonstrate an educational purpose.

IV. Commercial Applicants Should Be Allowed to Withdraw from an Auction on the Condition that the Frequency is Reserved for Noncommercial Use.

SRG proposes that non-profits should be allowed to explain why reservation of the channel for noncommercial stations would serve the public interest, even if the channel does not meet the technical criteria for reservation. *See SRG Comments*. This proposal would be available for commercial applicants to consider. Commercial applicants would then be allowed to withdraw from the auction on the condition that the frequency be reserved for non-commercial purposes.

This proposal is particularly helpful and creative and will allow increased non-commercial service under circumstances that benefit all parties. In some circumstances, a commercial applicant may wish to preempt a commercial competitor from occupying a particular frequency, but it might not oppose a non-commercial station on that same frequency. All parties may agree that it would be acceptable to add a noncommercial station. In such a circumstance, it would be tragic if the Commission’s rules inadvertently prevented an additional NCE station. In the past, settlement

negotiations would allow this result, but without modification, the auction process would prevent it. Therefore, NFCB supports SRG's proposal and supports its suggestion that Sections 1.2105(c)(1) and 73.5002(d) be amended to allow withdrawals under the limited circumstances proposed.

V. Channel 6 Should Be Reallocated for Non-commercial radio as Part of the DTV Transition.

NFCB agrees that the Commission should seriously consider reallocating TV Channel 6 to noncommercial radio broadcasting. As NPR explains, this move would alleviate long-standing interference complaints, would allow additional noncommercial broadcasting where none now can be offered, and would be an extremely equitable use of spectrum that is to be returned to the public as television broadcasters relocate to their new frequencies. NFCB recognizes that the DTV transition is complex, but putting Channel 6 to use for non-commercial radio broadcasting would provide a critical benefit to the public in the DTV transition that heretofore has been unrealized.

Conclusion

In conclusion, NFCB believes that the Commission should alleviate the shortage of spectrum available for NCE use by allowing NCEs to continue their historic access to non-reserved spectrum; adopting the FCC's proposed, more liberal, reservation policy; allowing commercial applicants to dismiss their applications on the condition that the frequency be reserved for noncommercial purposes; and by reallocating Channel 6 for non-commercial radio. Finally, those NCEs that are able to raise sufficient funds should be allowed to participate in auctions if they so choose.

Respectfully submitted,

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