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

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JUN 18 2002  
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In the Matter of )  
 )  
Reexamination of the Comparative )  
Standards for Noncommercial ) MM Docket No. 95-31  
Educational Applicants. )

REPLY COMMENTS.

I, Michael R. Birdsill, hereby offer these REPLY COMMENTS in the above referenced Matter. I fully and completely Support the COMMENTS filed by El Mundo Broadcasting Corporation ("EMBC") and Mr. Thomas M. Eells ("Eells"). I OPPOSE the COMMENTS filed by Educational Communications of Colorado Springs, Inc. ("ECCS") et al, the Station Resource Group ("SRG"), Beacon Broadcasting Corp. ("Beacon"), the National Federation of Community Broadcasters ("NFCB"), and National Public Radio ("NPR"), collectively the "NCE Parties".

SUPPORT OF THE COMMENTS OF EMBC AND EELLS.

These two parties demonstrate the equitable manner with which to deal with the current stalemate regarding NCE Applicants seeking Non-Reserved FM Channels and Licenses. In short, the Commission should adopt Option # 1: Hold NCE entities ineligible to Apply for Non-Reserved FM Channels; and a strict interpretation of Option # 2: In the event no Commercial entities Apply for a Non-Reserved FM Channel during a specified Filing Window, an NCE entity interested in the Channel can propose

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to Amend the FM Allotment Table to Reserve the Channel for NCE use. Eells rightly points out that NCE entities already have **exclusive access** to other Spectrum in the FM Band (88.1 MHz - 91.9 MHz), as well as the right to request Reservation of Non-Reserved Channels upon a proper showing (Report and Order-"Reexamination of the Comparative Standards for Noncommercial Educational Applications", 15 FCC Rcd 7396 at Paragraph 114 (2000)).

#### OPPOSITION OF THE COMMENTS OF THE NCE PARTIES.

The COMMENTS of the NCE Parties generally encouraged the Commission to set us a "Parallel Universe" to the Auction process of Non-Reserved FM Channels to Commercial entities. In this Alternate Dimension NCE entities would be allowed to:

File Mutually Exclusive Applications to Commercial entities on Non-Reserved FM Channels, and then pursue "settlements". "This would involve both engineering solutions and other types of settlements, **including those which are financial in nature.**" (Emphasis added, ECCS COMMENTS, page 3, para. 1.)

Voluntarily...participate in Auctions. (SRG COMMENTS, page 5, para. 2.)

Participate in a 30 day Window ("Petition Period") during which Non-Profits may propose dedication of Allotted frequencies for Noncommercial purposes. Replies and oppositions would be filed in a 15 day Reply period. During the "Petition Period", Non-Profits should be allowed to propose that a Non-Reserved frequency be Reserved for Noncommercial stations, based upon the **relative need for a new NCE station as opposed to the need for a new Commercial station.** (Emphasis added, SRG COMMENTS, page 8, para. 4.)

Only Non-Profits that had petitioned for Reservation of the Channel (**on technical or non-technical grounds**) during the Petition Period would be eligible to Apply for the frequency, or an NCE station. (Emphasis added, SRG COMMENTS, page 9.)  
NOTE: A Finder's Preference ? ? ?

Permit NCE entities to Reserve Channels in the band from 92.1 MHz to 107.7 MHz upon showing that interference considerations preclude construction and licensing of a **comparable facility** in the Reserved portion of the band. (Beacon COMMENTS, page 6.) NOTE: Regardless of the number of existing NCE Channels/Stations in that same Market/Service area.

Commercial Applicants would be allowed to withdraw from an Auction on the condition that the Frequency be Reserved for Noncommercial use. (NFCB COMMENTS, page 4, at IV.)

If there is no Reserve spectrum meeting the 50 Percent Standard (Reserved spectrum to serve at least 50 percent of the area within the protected service contour of the subject Allotment assuming full-class operation of a station at the Allotment site), the Commission would **Reserve** the Non-Reserved Channel scheduled for Auction. (Emphasis added, NPR COMMENTS, page 3, para. 3.) NOTE: Regardless of the number of existing NCE Channels/Stations in that same Market/Service area.

Therefore, the NCE Parties propose to either Reserve presently Non-Reserved FM Channels using very liberalized technical criteria, or Reserve presently Non-Reserved FM Channels based upon "Non-Technical" criteria (Comparative Hearings ??), and also earn a "Finder's Preference" for Petitioning for the Reservation of the FM Channel; that is, preclude "other NCE entities" from Applying for the newly Reserved FM Channel. Furthermore, settlements of Mutually Exclusive Applications between NCE entities and Commercial entities would be "encouraged", including "those which are financial in nature."

CONCLUSION.

NCE entities already enjoy an exclusive right to part of the FM Band, and presently have relaxed criteria for seeking a Reservation of Non-Reserved FM Channels in the Allotment process. Making NCE entities ineligible to Apply for Non-Reserved FM Channels (with the ability to Reserve Vacant, post-Window Non-Reserved FM Channels) is the most equitable solution to the current FM Auction stalemate.

In compliance with Section 1.52 of the Commission's Rules, the statements contained in these REPLY COMMENTS are true and accurate to the best of my knowledge.

DATE: 13 June 02

Signature: Michael R. Birdsill  
Michael R. Birdsill  
P.O. Box 1921,  
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CERTIFICATION OF SERVICE.

I, Michael R. Birdsill, do certify that a copy of the foregoing REPLY COMMENTS has been mailed via First-Class U.S. Mail, postage paid, to the parties listed below:

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DATE: 14 June 02

Signature: Michael R. Birdsill  
Michael R. Birdsill.