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**GARVEY SCHUBERT BARER**

**FILED/ACCEPTED**

**AUG - 9 2007**

Federal Communications Commission  
 Office of the Secretary

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April 4, 2007

Peter H. Doyle  
 Division Chief, Audio Division  
 Media Bureau  
 Office of the Secretary  
 Federal Communications Commission  
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 236 Massachusetts Avenue, NE, Suite 110  
 Washington, DC 20002

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**APR - 4 2007**

Federal Communications Commission  
 Bureau / Office

2007 APR - 5 P 2 51

Dear Peter:

On behalf of Station Resource Group (SRG), the National Federation of Community Broadcasters (NFCB), Public Radio Capital (PRC), Pacifica Foundation, Prometheus Radio Project, United Church of Christ, Office of Communication, Inc., Public Radio International, California Public Radio, Western States Public Radio, College Broadcasters, Inc., and Eastern Region Public Media, I propose establishing a limit of ten (10) applications that any applicant may file in the upcoming window for new noncommercial educational (NCE) stations. The Commission has announced that such a filing window will be opened October 12-19, 2007. Public Notice, DA 07-1613 (April 4, 2007).

In adopting procedures for the filing of applications for NCE stations, the Commission declined to propose any limit on the number of applications any applicant could file, based primarily on the prediction that window filing procedures and point system criteria would be sufficient to deter an excessive number of applications. 15 FCC Rcd. 7386, 7422 (2000)(NCE Order). The Commission, however, delegated to its staff the authority to implement NCE filing windows, and noted that, "If the

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number of mutually exclusive applications received under the new system exceeds our expectations, we reserve the right to establish by public notice a limit on the number of filings per applicant in a given period.” *Id.*

On reconsideration, the Commission again rejected proposals, by SRG and others, that the Commission limit the number of applications that could be submitted by an applicant in any particular window, see *Memorandum Opinion and Order*, 16 FCC Rcd. 5074, 5105 (2001) (“*NCE Reconsideration Order*”), but again reserved “the right to establish such a limit in the future by public notice, if the number of applications filed exceeds our expectations.” *Id.* at 5105.

Events subsequent to the *NCE Order* and *NCE Reconsideration Order* prompt a fresh look at this issue. The March 2003 filing window opened for FM translators on non-reserved channels attracted an “extraordinary volume” of applications. See *Second Order on Reconsideration and Further Notice of Proposed Rulemaking, Creation of Low Power Service*, 20 FCC Rcd. 6763, 6777 (2005). More than 13,000 applications were filed, approximately four times the number of applications as the number of translator stations authorized during the entire history of the translator service. Allegations that a majority of the applications were filed by only two applicants and concerns that the huge number of applications could deplete frequencies that might otherwise be used for new LPFM stations led the Commission to freeze the processing of translator applications and to initiate a rule making to reassess the relationship between translators and LPFM stations. *Id.* The lack of any limit on the number of applications that could be filed by a single applicant led to the breakdown of the entire processing system.

There is every reason to assume that the demand for new full-power NCE stations will be greater than the demand for translators. Full-service stations are entitled to interference protection not available



to translators, are capable of serving much larger areas than translators and, unlike translators, are permitted to originate programming. There are no filing fees for NCE applications, nor any requirement that interested applicants pay a fee in order to participate in an auction. The ownership limits imposed on commercial stations do not apply to NCE stations. *See* 47 C.F.R. § 3555(e). Demand for new NCE stations has been stimulated by the freeze that has been in place for more than seven years. *See NCE Order*. Thus, while there are many inducements to apply for new NCE stations, the only real deterrent is the possibility that some applications may not be granted, because they are mutually exclusive with the application of an applicant that will prevail under the point system.

If additional reasons for imposing a limit on the number of applications are needed, those reasons can be found in the pending Notice of Inquiry concerning localism, FCC 04-129 (2004), and in the point system itself. A reasonable limit on the number of applications will enhance the Commission's localism initiatives and further discourage applications from applicants that are not "local." To the extent that a limit on the number of applications would reduce the total number of applications filed during a window, a limit would increase the efficiency with which applications are processed and construction permits are awarded.

A limit on the number of applications must, however, be offset by a commitment to open subsequent filing windows on a regular, preferably annual, basis. An annual filing window will facilitate the orderly expansion of noncommercial radio, accommodate other federal programs, such as the Commerce Department's Public Telecommunications Facilities Program (PTFP), and reduce the artificial scarcity created by infrequent and unpredictable filing windows.

There is ample precedent for limiting the number of applications that can be filed, and for taking other precautions to discourage speculative filings. For example, the Commission imposed a limit of



five (5) applications that any applicant could file in the initial filing window for low power television stations. *Low Power Television and Translator Service (Filing Window Procedures)*, 2 FCC Rcd 1278 (1987); *see also* 47 C.F.R. § 73.3564(d) (1998) (“No more than five (5) applications for new low power TV or TV translator stations may be tendered for filing by any applicant, or by any individual or entity having an interest of one (1) percent or greater in any applicant(s) in a single filing period”). Similarly, in order to encourage diversity and localism, the FCC initially limited LPFM applicants to holding an attributable interest in only one station, and thus effectively reduced the incentive for filing multiple applications. *See* 47 C.F.R. § 73.855.

SRG previously proposed a limit of five applications by any applicant. Although that proposal was rejected, applicants may reasonably have concluded that any limit the Commission might subsequently impose would be greater than five. In order not to prejudice bona fide local applicants that may already have planned to file more than that number of applications, SRG and the organizations identified herein now propose a limit of ten (10) applications for the initial filing window.

That limit should apply to any party holding an attributable interest in more than ten (10) applications filed during the window. As noted above, such a limit is compatible with the goals of localism and diversity advanced by the point system, and with the authority already delegated to staff to adjust window filing procedures to comport with current expectations. Based upon their experience with the first filing window, the FCC staff may either increase or decrease the number of applications allowed in subsequent filing windows.



GARVEY SCHUBERT BARER

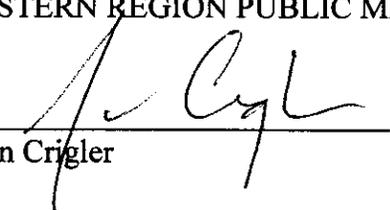
Peter H. Doyle

April 4, 2007

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*Respectfully submitted,*

STATION RESOURCE GROUP  
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PACIFICA FOUNDATION  
PROMETHEUS RADIO PROJECT  
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By   
John Crigler

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