

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF
UNITED CHURCH OF CHRIST, OFFICE OF COMMUNICATION, INC.;
NATIONAL COUNCIL OF THE CHURCHES OF CHRIST,
COMMUNICATION COMMISSION;
GENERAL BOARD OF GLOBAL MINISTRIES OF
THE UNITED METHODIST CHURCH;
DEPARTMENT FOR COMMUNICATION OF THE
EVANGELICAL LUTHERAN CHURCH IN AMERICA;
CIVIL RIGHTS FORUM;
LIBRARIES FOR THE FUTURE;
AND
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TABLE OF CONTENTS

Summary	iii
Introduction	1
I. The Reasons Driving a New Low Power Radio Service Must Not Be Forgotten: the Commission Must Ensure that Low Power Stations Serve their Local Communities.	3
A. At Least Fifty Percent of Low Power Station Programming Must be Locally Originated.	3
1. The Public is Losing Access to Locally-Originated Programming.	5
2. A Locally-Originated Programming Requirement is Fundamental to Service in the Public Interest.	8
B. The Commission Should Require Minimum Operating Hours.	9
II. The Commission Must Adopt Meaningful Ownership and Control Limits to Ensure this New Service Adds Diverse and Independent Views to the Airwaves.	10
A. The Commission Should Not Allow Non-Local Ownership and Should Limit One License Per Entity.	10
B. The Commission Should Adopt Noncommercial Attribution Policies.	13
III. Low Power Stations Must Comply with the Public Interest Obligations of the FCC and the Communications Act.	15
IV. While Both Commercial and Noncommercial Low Power Radio Will Serve Important Objectives, It May Be Reasonable for the Commission to Adopt a Fully Noncommercial Service at this Time.	20
A. A Noncommercial Low Power Service Would Implement the Goals of Low Power Radio and to Fulfill the Mission of Many Potential Licensees.	20
B. A Commercial Low Power Radio Service would Promote Station Ownership By Groups that are Underrepresented as Station Owners and Would Serve a Niche Not Served by Noncommercial Low Power Stations, but Such Stations will Face Significant Hurdles.	20
C. The Need for Commercial Stations Does Not Outweigh the Need for Noncommercial Stations, Particularly if a Choice Must Be Made Between Significant Numbers of Smaller Stations and a Few, Larger Commercial Stations.	24

V.	The Commission Should Adopt Clear, Meaningful Noncommercial Licensee Eligibility Criteria.	25
A.	The Commission Should Prioritize Applicants that Will Maximize Community Access to the Airwaves and Use a Lottery to Distribute All Other Licenses.	27
1.	Noncommercial Allocations	27
2.	Commercial Allocations	30
B.	The Commission Cannot Rely on Electronic Applications Alone and Should Adopt a Lengthy Filing Window.	31
	Conclusion	33

Summary

The proposed low power radio service gives the Commission what may be its last and best chance to reintroduce a locally-based, locally-produced program service, and thereby meet its statutory mandate of localism, embodied in Section 307(b), that has been at the heart of the Communications Act's public interest goals. To ensure that low power radio does not become a replica of currently-existing services, UCC, *et al.* call upon the Commission to require that half of each low power radio station's programming be locally originated. UCC, *et al.* also insist that the Commission adopt ownership limits that will ensure that the low power radio service can add diverse and independent perspectives to the marketplace of ideas. The Commission must also limit one license per entity. To this end, UCC, *et al.* propose noncommercial attribution policies to complement the commercial attribution rules, thereby ensuring that the ownership limitations the Commission adopts for noncommercial stations are not easily thwarted. The Commission should also adopt strict anti-trafficking rules.

The Commission cannot exempt low power radio stations from the public interest requirements of the Communications Act. As such, the Commission must adopt simplified rules that require low power licensee compliance with the public interest standard as well as the political programming and sponsorship identification requirements of Section 312, 315, and 317 of the Act. EEO rules, ownership reports and other basic information disclosures, such as maintenance of public files, must also be applied to low power licensees.

UCC, *et al.* strongly support a noncommercial low power radio service. In addition, while UCC, *et al.* also support creation of a commercial low power service, UCC, *et al.* do not believe that the need for commercial stations outweighs the need for noncommercial stations. It appears that

successful commercial stations may require the stations of the highest power, the LP1000 stations. Given that insufficient room for even one LP1000 station may exist in many large cities, UCC, *et al.* believe that smaller, noncommercial stations should receive priority. Thus, if the Commission chooses to authorize a fully noncommercial low power radio service, it should not limit noncommercial low power stations to the reserved spectrum.

To be eligible for a low power license, UCC, *et al.* propose two discrete criteria. First, a noncommercial low power applicant must certify that a majority of its board of directors resides in the station's service area. Second, an applicant must demonstrate that it is tax exempt under the federal tax code.

To allocate low-power licenses, the Commission should adopt a plan that balances between assigning licenses to organizations that will promote broad community access to the airwaves and allowing all applicants a fair chance to obtain a license. The Commission should adopt a two track allocation approach. The first track would include non-profit organizations such as churches, schools, libraries, colleges, and community access organizations, using a simplified comparative point system to select among these applicants. The Commission should then distribute remaining licenses using lotteries that incorporate the statutorily-mandated preference for entities controlled by minority groups.

Finally, the Commission cannot rely solely on an electronic application process. The communities that will be most in need of a low power radio station may be the least likely to have access to computer technology. The Commission cannot exclude the communities and individuals most in need of low power radio from even filing an application.

UCC, *et al.* does not address the technical aspects of the low power radio proposal here,

because we will do so in its reply comments in this proceeding.

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Introduction

UCC, *et al.* commend the Commission for initiating this proceeding. This may be the last chance to remedy some of the loss in program diversity which has accompanied the sweeping consolidation in ownership of America's broadcast outlets. Now is the time to take a strong, bold step toward reclaiming the public's airwaves for the American people.

The overwhelming public response to the Commission's proposal is perhaps the best evidence of the unfulfilled demand for truly local radio service. Today, as formal comments are filed, between 2,000 and 3,000 informal comments have been filed at the FCC by individual listeners and citizens. As word has spread throughout the country that there might be additional opportunities for churches, community groups, and members of the public to broadcast over the air, people have resoundingly come forward supporting this concept. In this era when "grassroots lobbying" generally refers to corporate-driven PR campaigns that generate artificial public response, this spontaneous movement demonstrates that a substantial number of applicants will come forward to assure that scarce spectrum will be used for the public good.

Full power radio services have changed dramatically in recent years. Congressional and FCC

modification of full power ownership policies have stimulated creation of an increasingly small number of increasingly large radio station groups. As recently as 15 years ago, no licensee could own more than 8 AM and 8 FM stations total, and no more than one of each in any market. Today, several ownership groups possess more than 200 stations. Through swaps and other transactions, these ownership groups are increasingly creating regional clusters of stations serviced by centrally-located regional management, with regional sales departments selling ever greater amounts of national advertising.

Although centrally-controlled program formatting with computer-generated play lists may yield increased profits, the corporate broadcaster's gain comes at the expense of program diversity and community responsibility. The availability of national advertising dollars makes it preferable for broadcasters to duplicate competitors' existing formats rather than seek unmet audience niches, especially where those audience niches are demographically less attractive.

This transformation of radio into a regional and national medium, without any heed to maintaining locally-oriented service, violates Section 307(b) of the Communications Act. Section 307(b) requires the Commission to distribute licenses "among the several States and communities as to provide a fair, efficient, and equitable distribution of service to each of the same." 47 USC § 307(b). The Commission cannot remain faithful to its authorizing statute while allowing every news and cultural medium in this country to serve nationwide needs and leave no means for communities to communicate with each other.

The Commission properly envisions low power radio as an antidote to the abandonment of certain audiences and neighborhoods. This goal would be defeated if low power radio were modeled after a profit-maximizing business plan that has failed as a readily accessible source of local news and

information for lower income, immigrant, and racial and ethnic communities.

The nation's citizens have the right to exchange ideas and wrestle with local problems through the media. There is a compelling need for citizens to be able to get accurate, unbiased news and information about their localities, down to the smallest neighborhood. Low power radio presents this opportunity. UCC, *et al.* urge the Commission to adopt a service that will serve those needs.

UCC, *et al.* focus these comments on the policy goals that comprise the core of our broadcast advocacy efforts. To ensure that significant number of low power radio stations are authorized, UCC, *et al.* intend to scrutinize the technical submissions in this docket and provide a detailed technical response in our reply comments. UCC, *et al.* intend to consider at that time proposals such as those which suggest authorizing LP1000 in rural areas only, or adding classes of stations beyond those proposed by the Commission.

I. The Reasons Driving a New Low Power Radio Service Must Not Be Forgotten: the Commission Must Ensure that Low Power Stations Serve their Local Communities.

Localism will not be restored if low power radio becomes a replica of currently-existing services. In this proceeding, the Commission has wisely decided to counteract the current consolidation in the full power commercial radio industry. Indeed, a primary benefit of creating a low power radio service is the likely increase in local coverage of local public affairs and culture.

A. At Least Fifty Percent of Low Power Station Programming Must be Locally Originated.

The Commission should require a minimum of 50 percent of the programming broadcast on a low power radio station to be locally originated. *See NPRM* at ¶68. UCC, *et al.* support creation of a low power radio service as a remedy for a failure of incumbents to produce locally-originated programming. *See Media Access Project and the Benton Foundation, What's Local About Local*

Broadcasting (April 1998); People for Better TV, Petition for Rulemaking (filed at FCC June 3, 1999).

The Commission argues that it need not impose a minimum local programming requirement "based on [its] expectation of the nature of the licensees that will populate LPFM" *NPRM* at ¶69. Unfortunately, although many of the commenters who support low power radio may intend to provide significant amounts of local programming, the Commission has no reason to assume that every entity that obtains a low power license will or can do so. Even potential licensees who may intend to provide local programming may face unexpected resource constraints, and will require a suitable incentive imposed by the FCC to ensure they make appropriate use of valuable spectrum. Most important, a requirement that low power licensees broadcast a minimum amount of local programming will attract applicants that intend to provide a locally-oriented service.¹

The Commission should use its historic definition of locally-originated programming to implement this requirement. Previously, the Commission defined local programming as "any program originated or produced by the station . . . and employing live talent more than 50 percent of the time." *See* FCC Form 303, Section IV-A, p. i (February 1969). This historic definition also included such programming that was taped for later rebroadcast. *Id.* This definition is similar to the "local origination" definition adopted without difficulty in the Low Power Television regulations, which define local origination as originating programming whose source signals are under the control of the

¹ For the same reasons, the Commission should not allow low power stations merely to replicate another station's programming by operating as *de facto* translator stations. *NPRM* at ¶69. Translators are appropriate when a community will receive little or no radio service without extension of a distant station into the community. Some imported service is better than no service at all. Low power stations, in contrast, will provide local programming. It would turn the purpose of low power radio on its head to allow these stations to operate as translators.

low power licensee. 47 CFR §74.701(h).² If the Commission seeks to provide greater flexibility in the definition of locally-originated programming, it might consider any programming that was taped or recorded within 50 miles of the location of the LPFM station's transmitter.

1. The Public is Losing Access to Locally-Originated Programming.

One significant reason to adopt a low power radio service is to improve coverage of local issues and culture. As the Commission recognizes, locally-originated programming reflects the needs, interest, circumstances, and perspectives that are unique to the community being served by a licensee. *NPRM* at ¶69. Without a locally-originated programming requirement, licensees may choose to broadcast less expensive pre-packaged programming on tape or downloaded from satellites.

It is important for the Commission to promote localism on radio because radio is the medium best suited to fulfill the statutory goals of assuring that the needs of each American community are met. 47 USC §307(b). Contemporary commercial radio has abandoned that mission. While nationally-distributed programming proliferates on radio and TV, locally-oriented outlets are a dying breed. Increasingly, broadcast media outlets, including full power radio stations, are owned by large media conglomerates whose interests are far removed from the community a particular station serves.³ Large regional ownership groups are becoming the norm.⁴ While this may advance FCC

² This definition of local origination specifically excludes transmission of a signal obtained from either terrestrial or satellite microwave feeds or other low power TV stations. *See id.*

³ For example, in 1997, the number of radio stations grew by 2.5 percent, but the number of owners fell by 11.7 percent. *See Review of the Radio Industry, 1997*, MM Docket No. 98-35 (Mar. 13, 1998), at 2.

⁴ Chancellor Media Corp., the largest radio ownership group, owns or operates 488 stations nationwide, giving the company tremendous control over the information the public receives. *See* Elizabeth A. Rathbun, *Bigger Buys Big*, *Broadcasting & Cable*, Oct. 12, 1998, at 33. Chancellor intends to expand further its media empire into television and billboards increasing its control over

and Congressional goals of assuring a healthy commercial radio industry, it does not adequately meet the separate statutory goal of localism.

Concern about profits in the commercial radio industry has all but eliminated local radio news reporting. As stations consolidate, many radio stations are "outsourcing" the reporting of news.⁵ Even stations with all news formats may be nothing more than a series of syndicated shows. For example, in the Washington, D.C. market, WTOP, an all news station, is the only commercial station that employs local reporters. Twelve of the stations in that market get their syndicated news from Metro Networks, and nine from Shadow (two of the providers that transmit syndicated news across the country).⁶

The proliferation of Internet and cable television outlets is no solution. Internet journalism, such as MSNBC and CNET, and most cable television channels contain nationally-distributed content which is directed at national, not local, issues.⁷ Indeed, studies show that very few people use the

the flow of information. See Elizabeth A. Rathbun, *More than Just Radio: Chancellor Seeks to Dominate Markets by Adding Television, Billboards*, Broadcasting & Cable, Oct. 12, 1998, at 28. After acquiring several stations in New York, Chancellor's CEO boasted that "[i]f you want to buy a spot on radio to reach women [in New York City], you have to buy Chancellor." See *id.* Recently, the fourth and fifth largest radio groups announced a merger that will create an entity that will operate 454 radio stations in 101 U.S. cities. See Tim Jones, *Zell Tunes in to Radio Mergers in \$4 Billion Deal*, Chi. Trib., Oct. 9, 1998; see also Allen R. Myerson, *Clear Channel to Buy Jacor for \$2.8 Billion in Stock*, N.Y. Times (Oct. 9, 1998) <<http://nytimes.com/yr/mo/day/news/financial/radio-merger.html>>.

⁵ See Lawrence K. Grossman, *The Death of Radio Reporting: Will TV be Next?*, Colum. Journalism Rev., Sept./Oct. 1998, at 61.

⁶ See *id.*

⁷ Moreover, access to cable television and the Internet is not universal. While 96 percent of the population listens to the radio at least once a week, one-third of Americans do not subscribe to cable, and 75 percent of the homes in the U.S. do not have Internet access. See Thomas E. Weber, *Who, What, Where: Putting The Internet in Perspective*, Wall St. J., Apr. 16, 1998, at B12; Donna

Internet as a significant source of information about local issues. According to a recent report, 49 percent of those surveyed regularly listen to radio news, while only 7 percent regularly use the Internet as a news source.⁸ Moreover, those few that use the Internet to seek out local information may find that the source of such information is their local broadcast station.⁹

Similarly, some cable systems carry a local news channel; but because in many cases these channels simply rebroadcast programming from a local broadcaster or newspaper, they do not provide a diverse outlet for information on local issues.¹⁰ Because the geographic reach of low power radio

Petrozzello, *Radio Touts 210 Million Listeners Weekly*, *Broadcasting & Cable*, Jan. 30, 1997, at 46; *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 98-102 (Dec. 1998) at ¶7. One reason for the higher penetration of broadcasting is that only broadcasters' signals may be received by an antenna at no cost to the viewer. In contrast, cable and the Internet are available only at substantial cost. See *Statistical Report on Average Rates for Basic Service, Cable Programming Services and Equipment*, 12 FCC Rcd 22756, 22762 (1997) (average monthly fee for basic cable service is \$29). Necessary equipment for accessing the Internet can cost from \$450 (for Web TV) to \$3,000 (for a personal computer with the correct hardware and software), and \$20 to \$25 a month for an Internet service provider. See Robin Frost, *The Internet (A Special Report): What Does It Cost?*, *Wall St. J.*, Dec. 9, 1996, at R10; *AOL Stock Up as Rivals Shift Pricing Stance*, *Media Daily*, Apr. 2, 1998. See also *Falling Through the Net: Defining the Digital Divide*, National Telecommunications and Information Agency, Department of Commerce (July 1999) at 43 (explaining that two-thirds of Americans lack Internet access).

⁸ See Newspaper Association of America, *So Many Choices. So Little Time* (1998) at 11; see also Steve McClellan, *Grades Improve for Local News*, *Broadcasting & Cable*, Sept. 21, 1998, at 50.

⁹ For example, at www.MSNBC.com a person can access local news for selected cities. However, the news is provided by local NBC affiliates, not an independent source. See *Local News, MSNBC* (visited Aug. 2, 1999) <<http://www.msnbc.com>>; see also *Local-link* (visited Aug. 2, 1999) <<http://www.cnn.com>> (CNN's web site provides links to affiliated local broadcasters' web sites, but does not report on local issues itself).

¹⁰ See David Lieberman, *The Rise and Rise of 24-hour Local News*, *Colum. Journalism Rev.*, Nov. 1, 1998, at 54. Additional examples abound. For instance, one major media company, A.H. Belo, uses programming from its local television stations and newspapers to provide programming for its cable news channels in New Orleans, Texas, and the Pacific Northwest. Likewise, in Washington, D.C., the local cable news channel, Channel 8, which is commonly owned with the local ABC affiliate, WJLA, rebroadcasts much of the ABC News programming. See *id.* See also, Linda Moss,

stations will be small relative to most other media, they are uniquely able to provide local service. Thus, the Commission should ensure that low power radio stations are a source of locally-produced content.

2. A Locally-Originated Programming Requirement is Fundamental to Service in the Public Interest.

Locally-originated programming requirements are a basic element to the Commission's implementation of the public interest standard. They are the single most important mechanism the Commission can employ to remediate the marketplace's failure to address needs of particular ethnic, cultural, and geographic sectors of the audience. The Commission has employed different mechanisms to achieve this goal from time to time since 1934, but throughout the Commission's history, "[t]he principal ingredient of such obligation consists of a diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his service area." *1960 Program Policy Statement*, 25 F.R. 7291, 7293 (1960).

The current programming requirements for full power licensees contain no quantitative obligations because the Commission has expected marketplace forces to substitute for a specific mandate. *Radio Deregulation*, 84 FCC 2d 968, 977 (1981). The reason low power service is now under consideration is because this prediction has been proven wrong; the market has not worked for some segments of some communities.

The Commission's statutory power to mandate specific amounts and kinds of programming is unquestioned. *UCC v. FCC*, 707 F.2d 1413, 1434 (D.C. Cir. 1985) (finding "the Commission's

The Upside of Retrans, Multichannel News, Jan. 27, 1997, at 34A (detailing similar situation in San Francisco); and *see Company Overview* (visited Dec. 29, 1998) <<http://www.tribune.com/about/index.htm>> (describing similar use of newspaper as source for cable station in Chicago and central Florida.)

imposition on licensees of an obligation to provide programming responsive to community issues constitutes a reasonable interpretation of the public interest standard"); *see also*, *CBS v. DNC*, 412 U.S. 94, 112 (1974); *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969); *NAIPTD v. FCC*, 516 F.2d 526, 536 (2d Cir. 1975) (holding that "the general power of the FCC to interest itself in the kinds of programs broadcast by licensees has consistently been sustained by the courts against arguments that the supervisory power violates the First Amendment"). The requirement described here resembles in form, if not in complexity, the duty TV stations have to provide educational and informational programming for children. *Policies and Rules Concerning Children's Television Programming*, 11 FCC Rcd 10660 (1996). In implementing its guidelines for a three hour weekly minimum, the Commission stated that "[o]ur new regulations, like the CTA itself, impose reasonable, viewpoint-neutral conditions on a broadcaster's free use of the public airwaves. They do not censor or foreclose speech of any kind. They do not tell licensees what topics they must address."¹¹ *Id.* at 10729-30.

B. The Commission Should Require Minimum Operating Hours.

The Commission should impose a low, but reasonable, number of minimum operating hours for low power licensees. *NPRM* at ¶76. As the volume of public responses suggest, many of these frequencies are likely to be in high demand and should not be granted to licensees who cannot or will not produce some minimum amount of programming. If the Commission is concerned that such

¹¹ UCC, *et al.* believe that the fairness doctrine is a desirable mechanism to implement the more general requirement of fairness mandated by the Communications Act and that the doctrine advances First Amendment objectives. *See Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969). That aside, that affirmative obligation proposed here most certainly does not pose the kinds of problems which impelled a prior Commission to stop enforcing the doctrine. *See Syracuse Peace Council v. FCC*, 2 FCC Rcd 5043 (1987).

requirements are too burdensome, *see NPRM* at ¶77, it may want to consider imposing minimum operating hours only for licenses for which there were multiple applicants. UCC, *et al.*, however, encourage the Commission to adopt a single, very simple set of rules for all stations.

UCC, *et al.* propose using current noncommercial educational ("NCE") operating requirements as a model for low power radio stations, and propose requiring low power stations to broadcast a minimum of at least 5 hours per day at least six days per week. *See* 47 CFR §73.561(a). Because these are small stations, the Commission should extend its current policy of allowing stations 30 days to resume their minimum broadcast obligations if, and only if, they report the service interruption to the Commission within 10 days. *Cf.* 47 CFR §73.561(d); 47 CFR §73.1740(a)(4). More lengthy outages must also be reported to the FCC. Self-reporting will minimize enforcement burdens that concern the Commission, *see NPRM* at ¶77, and will emphasize to licensees the importance of not wasting valuable spectrum.

II. The Commission Must Adopt Meaningful Ownership and Control Limits to Ensure this New Service Adds Diverse and Independent Views to the Airwaves.

A. The Commission Should Not Allow Non-Local Ownership and Should Limit One License Per Entity.

With two important exceptions, UCC, *et al.* generally support the Commission's proposals with respect to limiting the number of low power stations in which any entity may have an ownership or similar interest. *NPRM* at ¶57. UCC, *et al.* oppose the Commission's plan to permit non-local ownership, and to permit more than one station per licensee. *NPRM* at ¶60. Adoption of these two proposals would fatally alter the desired characteristics of low power service.

As discussed above, full power radio services have changed dramatically in recent years. Congressional and FCC modification of full power ownership policies have stimulated the creation

of an increasingly small number of increasingly large radio station groups. The public is losing access to diverse sources of information, particularly local information.

UCC, *et al.* particularly endorse the Commission's proposal to look at program control as well as traditional direct equity interests to define ownership for these purposes. *NPRM* at ¶57. In one material respect, however, the Commission's proposal does not go far enough. The *NPRM* proposes to prohibit LMAs and similar arrangements with full-power stations. *Id.* Perhaps inadvertently, the *NPRM* is silent as to arrangements between two or more low power stations. There is no sound reason why the Commission would permit erosion of low power ownership rules by means of devices such as LMAs. This should be expressly stated in any such low power rules that the Commission may adopt. Time brokerage, LMAs, joint marketing and similar devices, which have fewer superficial characteristics of control, offer as much or greater control of a station and its programming as do actual ownership. Stations operated under such arrangements are just as likely to reduce net diversity as are jointly-owned stations.

The 1996 Telecommunications Act does not prohibit the Commission from adopting ownership limits for low power radio stations. As the Commission has pointed out, *NPRM* at ¶59, Congress has in directed the Commission to ease ownership strictures on full power commercial radio stations by amending prior ownership strictures codified at 47 CFR §73.3555(a). By its terms, however, Section 202(b) of the 1996 Act applies only to Section 73.3555(a) of the Commission's rules, which govern commercial radio.¹² It is utterly inapplicable to noncommercial properties or to any service not governed by 47 CFR§73.3555. There is no reason to believe that this principle should

¹² Section 202 of the 1996 Telecommunications Act states "[t]he Commission shall revise section 73.3555(a) of its regulations" and proceeds to list the mandated changes. Pub. L. 104-104, 110 Stat. 110 (1996).

apply to low power radio, a service which neither Congress nor the FCC envisioned at the time the 1996 Act was passed.

The Commission should also have well-enforced limitations on national broadcast ownership. *Cf. NPRM* at ¶60 (proposing a national limit of 5 to 10 stations). The Commission's view that economies of scale from national ownership will improve service is especially ill-founded. *See id.* The cost structure of low power radio is dramatically different from full power stations. Inexpensive equipment and volunteer labor generate an extremely low cost structure. Moreover, while Congress has directed the Commission to favor consolidation over diversity, one of the premises justifying low power radio is that it will increase diversity and address those communities which have been abandoned as a result of consolidation in full-power commercial radio. Permitting absentee owners with more than one station is antithetical to this concept.¹³

UCC, *et al.* also urge the Commission to adopt strict anti-trafficking rules which prohibit the sale of a station held for less than five years. Licensees should be allowed to obtain waivers for good cause shown. In implementing the rule, the Commission should be especially vigilant for indications that a sale is merely consummating a prior unlawful transfer of control or is otherwise related to an undisclosed time brokerage or other arrangement.¹⁴

B. The Commission Should Adopt Noncommercial Attribution Policies.

In addition to addressing variables to be considered in applying its ownership rules to low power radio, the Commission has also sought comment on "what other interests or relationships (if

¹³ *See infra* Section V (proposing boards of directors comprised of a majority of residents of a low power station's service area).

¹⁴ UCC, *et al.* suggest that applicants should specifically certify that there has been no prior undisclosed programming arrangement or ownership interest.

any) should be attributable in the context of low power radio." *NPRM* at ¶57.

Although this question is not afforded much significance in the *NPRM*, it in fact raises some of the more important issues contained in this docket. The character and quality of a low power service will be a function of whether the ownership policies the Commission establishes are enforceable. Many broadcasters have exploited the Commission's overly casual approach towards defining attributable ownership interests to evade numerical and geographic limits on ownership. Over the last decade, progressively loose definitions of attribution precipitated massive abuse and was a major contributing factor to the loss of local radio service. *See, e.g.,* Dissenting Statement of Commissioners Ness and Tristani, Application of Pine Bluff Radio Inc and Seark Radio, Inc., FCC 99-67 (rel. April 15, 1999).

Attaining the goal of locally-based and diverse low power service requires reasonably strict definitions of what constitutes an attributable ownership interest. For commercial licensees, the Commission should strictly enforce its current attribution rules. For noncommercial licensees, however, the Commission should adopt noncommercial attribution policies.

Where a licensee is a non-profit institution, its board of directors should be attributed as the owners of the licensee so long as the applicant certifies that there are no other parties in interest who exercise actual operative control. Other entities should specify each individual who is capable of exercising control and certify that there are no other parties in interest. Licensees should be held to a continuing obligation to notify the Commission within 30 days of any material changes. The Commission should accept the self-reporting of licensees absent extrinsic evidence that other individuals or groups can exercise control over the licensee.

More difficult issues are presented with respect to defining when and how transfers of control

are recognized. In placing control in self-perpetuating boards of directors of low power licensees, the Commission should not treat the mere replacement of some or all of the members as constituting transfer of control as it has proposed. *See Transfers of Non-Stock Entities NOI*, MM Docket 89-77, 4 FCC Rcd 3403, ¶22 (1989). The Commission was correct to conclude that, in the case of boards where some or all members are elected by a membership at large, control should be treated as residing in the membership, so that election of new board members does not constitute a transfer of control. *Id.* at ¶14. The Commission should look to a change in the relevant portion of the noncommercial entity's governing documents with respect to its broadcast operations to help identify transfers of control. Transfers of control should be suspected when the new board states in its initial or subsequent certification that it seeks to change fundamental operating principals of the licensee or adopt a significant change in programming or programming policy.

The most difficult circumstance arises where board members are not self-perpetuating or elected by a general vote. If, in such cases, an outside party has authority to select all or the majority of the board, that party to should be deemed to have control. To identify transfers of control, the Commission should operate from a presumption that change in a majority of members of the board is a transfer of control.

In devising an attribution policy for the proposed low power service, it is critical to bear in mind that small local non-profit organizations rely on volunteers from the community at large to bring expertise and to assure responsiveness to community needs. These individuals often have many affiliations and relationships with other community-based organizations. As a consequence, application of traditional ownership and attribution standards to the low power service could prove overly restrictive. Rules which were developed largely in the context of commercial broadcasting overstate

the influence and role of ownership for non-profit institutions. In particular, board membership often does not carry the influence which can come from participation in larger institutions.

Adopting noncommercial attribution rules is an especially delicate task, since the evolving nature of the service is such that it will not be possible to produce iron-clad attribution definitions. Thus, the Commission should grant waivers for good cause shown. Experience of recent years with full power commercial radio suggests that it is far preferable to employ waivers adopted with public notice and a public opportunity to participate than it is to encourage aggressive and creative constructions of attribution and related policies which are adopted in uncontested matters, often with no published decision describing the changed policy.

III. Low Power Stations Must Comply with the Public Interest Obligations of the FCC and the Communications Act.

All low power radio licensees should be required to comply with public interest programming requirements. *See NPRM* at ¶¶70-75. The Commission proposes requiring LP1000 licensees to comply with the full complement of Commission rules, but proposes streamlining the obligations of the two smaller classes of licensees. *Id.* at ¶72.

As to LP 100 and microradio stations, the Commission stated "we are disinclined to put the burdens of complying with specific programming requirements on these licensees" *Id.* at ¶72. If the Commission is proposing that LP 100 and micro radio are not subject to the fundamental duty to operate in the public interest, then the Commission is outrageously attempting to flout the most important provisions of Title III of the Communications Act. UCC, *et al.* surely agree that there is no need for the detailed regulatory scheme imposed upon of full-power licensees. After all, these small stations should, under the requirements suggested here, have close ties to the neighborhoods

they will serve. But this does not mean that the Commission, as a matter of law, can, or as a matter of policy, should, leave the impression that any broadcaster, even a micro broadcaster, may, for example, accept money for carrying a particular underwriting message without identifying that a payment was made, or fail to provide programming meeting the needs of its community.

Application of Title III duties to low power stations is non-discretionary. The Commission must, at a minimum, require all low power broadcasters to comply with the requirements of the public interest standard, as well as the specific duties required by Sections 312, 315, and 317 of the Communications Act.¹⁵ UCC, *et al.* also believe it would be a gross disservice to the listening public not to impose specific, if very modest and flexible requirements implementing those provisions of the law.

The consequences of not imposing some limited and specific regulation would be far worse than the modest burdens which accompany the promulgation of such rules. Although UCC, *et al.* expect that low power stations will rarely flout the law and seldom fail to provide service in the public interest, the listening public is entitled to have means to enforce the law against malfeasors. More important, the Commission's failure to articulate how it will apply the law to low power stations will create uncertainty and confusion. When a citizen group files a complaint or petition seeking enforcement of mandatory provisions of Title III, the Commission would be left with no standards to evaluate the complaint. Moreover, a confused licensee may seek to explain, for example, that it did

¹⁵ The Commission should take care to be more precise than it is in the *NPRM*, where it incompletely describes Section 312(a)(7) as “requir[ing] licensees to permit purchase of reasonable amounts of air time” By its terms, Section 312(a)(7) applies where licensees give time to candidates. More important for the low power service, Section 312(a)(7) also applies to noncommercial broadcasters, which must provide reasonable access free of charge. *Commission Policy in Enforcing Section 312(a)(7) of the Communications Act*, 68 FCC 2d 1079, 1092-1095 (1978).

not know that it could not accept money from a local business in exchange for running a "news story" featuring that establishment.

The Commission must ensure the statutory provisions applicable to all broadcast stations apply to the new low power stations.¹⁶ For example, Section 317 of the Communications Act requires all stations, including low power stations, to comply with sponsorship identification obligations. 47 USC §317; 47 CFR §73.1212. In addition, as the Commission acknowledges, *NPRM* at ¶75, the political programming requirements in Sections 315 and 312(a)(7) of the Communications Act apply to all broadcast licensees. These sections require commercial and noncommercial licensees to afford "equal opportunities" to candidates and to provide "reasonable access" to federal candidates.¹⁷ Furthermore, commercial stations are required to sell political advertising at a discounted rate. The simplified scheme to implement these requirements adopted for low power television should be adopted for low power radio. *See* 47 CFR §74.780; *Low Power Television Order*, BC Docket No. 78-253, 51 Rad. Reg. 2d 476 at ¶105, 47 FR 21468 (1982).

In addition, Section 315's mandate that stations operate in the public interest specifies and requires a basic standard of fairness that includes presenting conflicting viewpoints on certain issues. As UCC, *et al.* have repeatedly argued, the Commission's political editorial and personal attack rules were adopted as partial fulfillment of that statutory requirement and must also be implemented in

¹⁶ As the Commission acknowledges, it must apply the statutory restrictions on alien ownership, and character qualifications, such as the prohibition against a convicted felon obtaining a broadcast license, fully apply to low power stations. *See NPRM* at ¶63.

¹⁷ *See TRAC v. FCC*, 801 F.2d 501, *rehearing en banc denied*, 806 F.2d 1115 (D.C. Cir. 1986), *cert. denied*, 482 U.S. 919 (1987). In that case, Judge Bork reiterated that all broadcasters must comply with Sections 312(a)(7) and 315. The Court affirmed the Commission's determination that "reasonable access" was assured without giving candidates access to a station's "ancillary or subsidiary service offerings" because access would be available on the main channel. *Id.* at 510, 513.

some form by the Commission. At a minimum, the Commission must adopt a basic fairness obligation for all low power radio licensees, including duties relating to non-election-related issues.¹⁸

The Commission declines to propose specific obligations on LP100 and microradio broadcasters because it expects that "the very nature" of these stations will ensure they serve the public. *Id.* at ¶72. Unfortunately, more than simple expectation is necessary to ensure that the basic public interest functions codified in the Commission's rules are preserved. The purpose of these rules are no less important because the new stations will operate at a lower power level. In fact, because hopefully these stations will broadcast less homogenized programming and will be controlled by diverse entities, many of the Commission's rules may be more important, not less. Although the Commission is concerned that enforcing these rules will require significant resources, the Commission may rely upon listener complaints as it has always done to address compliance with these rules. A simplified enforcement procedure may well be appropriate for these complaints.

Moreover, the Commission should not abandon the basic information disclosures that currently apply to full-power broadcasters. Listeners of low power stations have as much of a need as other listeners for information regarding the identity of the broadcasters they hear. The function of a station's main studio -- such as making available to the public certain basic information about station obligations and listener rights -- must be preserved, although the Commission may simplify those obligations for low power stations. *See NPRM* at ¶73. A low power station's public file should include the most recent ownership of the station (as described below) and the standard issues/programs list as required by 47 CFR §73.3526(e)(12), as well as material required to comply

¹⁸ It bears emphasis that the Commission has broad discretion to fashion an administratively suitable scheme to fulfill the essential statutory element of the public interest standard.

with Section 317.¹⁹

Consistent with the attribution principles described above, the Commission should require low power broadcasters to submit ownership reports whenever their ownership structure changes from that originally submitted in its license application and for any changes thereafter. Similarly, the Commission's EEO rules, which are currently being considered in a pending proceeding, *Notice of Proposed Rulemaking, Review of the Commission's Broadcast and Cable Rules and Policies and Termination of the EEO Streamlining Process*, 13 FCC Rcd 23004 (1998), should be applied to low power radio.²⁰

IV. While Both Commercial and Noncommercial Low Power Radio Will Serve Important Objectives, It May Be Reasonable for the Commission to Adopt a Fully Noncommercial Service at this Time.

The Commission asks whether low power radio stations should be limited to noncommercial licensees, and whether low power licensees should be required to meet the same standards as full-power noncommercial educational licensees. *NPRM* at ¶¶19, 69.

A. A Noncommercial Low Power Service Would Implement the Goals of Low Power Radio and to Fulfill the Mission of Many Potential Licensees.

¹⁹ Section 73.1212(e) of the Commission's rules -- which implements, in part, Section 317 of the Act -- requires that, when a broadcast containing political material or controversial issues of public importance is sponsored, all broadcasters place the names of the sponsor's governing entities in that station's public file. *See* 47 CFR § 73.1212(e).

²⁰ The Commission's EEO broadcast rules currently apply only to stations with five or more employees. *See* 47 CFR §73.2080; Instructions for Form 303-S, Application for Renewal of License for Commercial and Noncommercial AM, FM, TV, Translator, and LPTV Stations. Thus, small low power stations would not have to comply with these rules. Moreover, the Commission has proposed relaxing the rules so that they apply only to stations with ten or more employees. *See Notice of Proposed Rulemaking, Review of the Commission's Broadcast and Cable Rules and Policies and Termination of the EEO Streamlining Process*, 13 FCC Rcd 23004, 23033 (1998). Although UCC, *et al.* oppose raising the threshold in this manner, if such a proposal is adopted, it will further reduce any burden on low power licensees.

As explained extensively above, low power radio will help to balance the service provided by large commercial radio broadcasters. As such, a noncommercial service will be the best counterweight to a commercial service that chooses to serve audiences based on their ability and willingness to buy products. Furthermore, many of the entities that are well-positioned to begin a small low power radio service, such as the commenters which comprise UCC, *et al.*, are non-profit organizations. For these reasons, UCC, *et al.* fully endorse a noncommercial low power radio service.

B. A Commercial Low Power Radio Service would Promote Station Ownership By Groups that are Underrepresented as Station Owners and Would Serve a Niche Not Served by Noncommercial Low Power Stations, but Such Stations will Face Significant Hurdles.

Commercial low power stations could provide an important entrepreneurial opportunity for members of demographic groups that have historically been underrepresented in the broadcast industry as licensees and professionals. UCC, *et al.* seek to remedy the dearth of people of color and women in the broadcast industry, and to make licenses available to those of lesser means. Because they would be less expensive to build and to operate, low power commercial stations will be within the reach of individuals who cannot match the huge capital reserves in the hands of incumbent broadcasters. Prior experience demonstrates that the opportunity to purchase and run a small commercial station often leads to larger business opportunities. *See, e.g.,* Sylvia Moreno, *Spanish Language Radio Stations are Making Waves*, Washington Post at B01 (April 13, 1999) (describing how several Hispanic successful radio stations began as small AM stations). As such, making these stations available might enable greater numbers of historically underrepresented groups to demonstrate their ability to own and operate a station. These stepping-stone stations could expand diversity in full-power station ownership, as their owners demonstrate that their business plans are worthy of

financial investment. These goals will be achievable without using a race or gender specific preference, thus deflecting much of the criticism directed toward other policies favoring members of underrepresented groups.

In addition, low power commercial stations may be able to fulfill niches in the radio programming market that cannot be filled by either full power stations or low power noncommercial stations. Because low power owners may be more likely to be members of underrepresented groups than owners of full power commercial stations, these station owners will be more able to tailor programming to serve those segments of the listening audience. Without diversity among owners and decision-makers, broadcast media present a narrow view of the world that often underrepresents or misrepresents the role of women and minorities.²¹ Indeed, the underrepresentation of minorities in decision-making positions, particularly ownership positions, accounts for broadcast media's unresponsiveness to and stereotyping of minorities generally.²²

In contrast, studies demonstrate that when women and minorities are in control, broadcasters offer programming that meets the needs of these audiences. Studies indicate that when women make decisions about programming, they portray women in a better light and cover issues of concern to

²¹ Marilyn Fife, *Promoting Racial Diversity in U.S. Broadcasting: Federal Policies Versus Social Realities*, 9 *Media, Culture and Science* 481, 484 (1987); *see also*, Allen S. Hammond, *Diversity and Equal Protection in the Marketplace: The Metro Broadcasting Case in Context*, 44 *Arkansas L. Rev.* 1063, 1084 n.86 (1991) (arguing that majority-owned media, through its reporting, will sometimes fuel racial tensions by focusing on inter-racial crime, for example, while ignoring similar acts committed by and against members of the same race).

²² In 1998, minority owners controlled a mere 2.9% of all radio and television stations in the United States. *See*, The Minority Telecommunications Development Program, National Telecommunications and Information Administration, U.S. Dept. of Commerce, *Minority Commercial Broadcast Ownership in the United States (1998)* (visited Nov. 4, 1998) <<http://www.ntia.doc.gov/opad-home/minown98>>.

women.²³ Similarly, empirical studies indicate that minority owners air programming that is more diversified generally with regard to race and sex. As one study of 7,000 broadcasters established:

[B]lack formatting and black programming are significantly affected by black ownership . . . Black ownership also significantly increases the likelihood of programming in Spanish and of targeting females. Hispanic ownership at any significant level has a significant impact on black programming, Spanish programming, targeting Asian listeners, targeting female listeners, and American Indian programming.²⁴

Further, commercial stations are likely to have a more reliable source of revenue than noncommercial stations, thus enhancing their ability to produce quality locally-originated local programming. A more stable source of revenue may also enable a station to take programming risks that a noncommercial station, dependent upon the good-will of funders, may not. Moreover, although insufficient noncommercial programming responds to underserved communities, commercial programming for those communities is also needed.

In addition, as the Commission recognizes, *NPRM* at ¶69, commercial low power radio stations may provide a competitive outlet for local advertising. The Commission has already demonstrated that the radio advertising market suffers from significant infirmities -- rather than responding to market pressures, radio advertising executives may defer to their prejudices by avoiding

²³ See Dr. Martha M. Lauzen, *Making a Difference: The Role of Women on Screen and Behind the Scenes in the 1995-1996 Prime-Time Season*, School of Communications, San Diego State University, at 18 (1996). Lauzen establishes that when television shows employ one or more female executive producers, directors, or writers, female characters more often speak, introduce topics of conversation, have the last word, and advise. *id.*; see also, *It Matters Who Makes It: A Review of Research on Women, Audiences and the Media*, 28 (Mountain Media Lab, Simon Fraser Univ. 1993) (profiling successful women producers, all of whom produced popular programs featuring strong female lead characters).

²⁴ Jeff Dubin and Matthew L. Spitzer, *Testing Minority Preferences in Broadcasting*, 68 S. Cal. L. Rev. 841, 864 (May 1995).

stations that target certain demographic groups, regardless of those stations' audience size.²⁵ Much of this discrimination is possible because large numbers of stations are owned by a single entity, thus, a single discriminatory policy can affect the advertising revenue of many stations.

Unfortunately, smaller commercial radio stations, such as the proposed LP1000 stations may be less able to attain profitability than larger stations. If this were the case, the new entrepreneurs who purchase these stations, such as people of color and women, may face greater hurdles than full power broadcasters. Saddling new entrants with a less successful service will not promote the goals of diversifying radio ownership that UCC, *et al.* seeks to promote. Further, because the Commission must auction commercial stations, it may be difficult to ensure that targeted groups receive stations.²⁶

In addition, creating a commercial low power radio service that might increase the numbers of station owners who are women and people of color could jeopardize the Commission's more important efforts to ensure that women and people of color are fully represented among the nation's full power station owners. Opponents of the Commission's goal of increasing diversity among its licensees may point to the existence of low power stations as a reason to reduce efforts in other areas: if the Commission does adopt a commercial low power service, it must therefore make clear that a limited low power radio service will not substitute for broader participation in the full power service.

These obstacles to creating opportunities for underrepresented groups reduce the likelihood that commercial low power stations will serve their intended goals.

²⁵ K. Ofori, *When Being No. 1 Is Not Enough: The Impact of Advertising Practices on Minority Owned and Minority-Formatted Broadcast Stations* (Jan. 1999) (submitted to Office of Communications Business Opportunities, Federal Communications Commission).

²⁶ The Communications Act requires the Commission to auction commercial licenses if more than one applicant seeks a license. *See* 47 USC §309(j).

C. The Need for Commercial Stations Does Not Outweigh the Need for Noncommercial Stations, Particularly if a Choice Must Be Made Between Significant Numbers of Smaller Stations and a Few, Larger Commercial Stations.

The Commission appears to propose an LP1000 service mainly because it believes that a station of that power would be necessary to create a viable commercial service. *See NPRM* at ¶¶13, 24, 27, 69. In addition, the appendices to the *NPRM* show that, under the Commission's analysis, insufficient room for even one 1000 watt station exists in many large cities. *NPRM*, Appendix D. UCC, *et al.* are concerned that an effort to create low power stations of sufficient size to create a viable commercial service may jeopardize significant numbers of small stations that could be allocated to churches, community groups, and other smaller entities.

The larger size of the commercial stations that is necessary to sustain a commercial service is a significant drawback of a commercial service, if the Commission is faced with choosing between a few larger commercial stations and many smaller noncommercial stations. The Commission must maximize the number of stations authorized in order to allow licensing of the greatest number of community-based organizations. These organization are most likely to fulfill the promise of low power radio.

If the Commission chooses to authorize a fully noncommercial low power radio service, it should not limit noncommercial low power stations to the reserved spectrum. Not only would that unreasonably limit the number of available stations, but it would be extremely unfair to the current noncommercial full-power licensees.

V. The Commission Should Adopt Clear, Meaningful Noncommercial Licensee Eligibility Criteria.

The Commission should require noncommercial applicants to demonstrate that a majority of

the entity's board resides in the station's service area and that the applicant is tax exempt under the federal tax code. *See NPRM* at ¶19 (asking whether applicants for noncommercial licenses should be required to meet the Commission's current eligibility criteria). Currently, the Commission's eligibility requirements for noncommercial radio licensees are vague and subjective. The Commission's rules state that "a noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program." 47 CFR §73.503(a).²⁷

The Commission must require that a majority of the applicant's board reside within the service area. This requirement would ensure that the potential low power broadcaster has sufficient ties to the community it intends to serve. The Commission should ensure a connection to the population served by a station because the Communications Act requires that the Commission license broadcasters to communities. 47 USC §307(b). Localism is also an historical mission of broadcasters licensed by the FCC²⁸ and of noncommercial broadcasting in particular.²⁹

UCC, *et al.* also propose that noncommercial applicants be required to demonstrate that they

²⁷ In addition, the Commission notes that it will consider the accreditation of educational organizations. 47 CFR §§73.503(a)(1)-(2). For a critique of the NCE criteria, *see* Randi M. Albert, *A New "Program for Action": Strengthening the Standards for Noncommercial Educational Licensees*, 21 *Hastings Comm/Ent L.J.* 129 (1998).

²⁸ *See, e.g., Radio Deregulation Order*, 84 FCC 2d 968, 978 (1981) ("We do expect, and will require, radio broadcasters to be responsive to the issues facing their community."); *Second Radio Deregulation Order*, 96 FCC 2d 930, 931 (1984) ("A station still is expected to address those issues that it believes are of importance to its community of license . . ."); *1960 Program Policy Statement*, 25 F.R. 7291, 7293 (1960); *Public Service Responsibilities of Broadcast Licensees* (1946).

²⁹ *See, e.g., Carnegie Commission Report* at 49-52 (1964) ("It is clear that by presenting and producing [local programming] the station manager can provide . . . a comprehensive service for his community which is not now being performed by any other medium.").

are tax-exempt under Section 501(c)(3) of the Internal Revenue Code. As it had proposed at one time for the full-power NCE service, the Commission should also abandon the obligation that the noncommercial service include an educational component.³⁰ *Eligibility for Noncommercial Educational FM and TV Broadcast Station Licenses*, 43 Fed. Reg. 30842 (1978).

UCC, *et al.* does not propose other eligibility criteria that would exceed the operational obligations laid out herein. The obligation of a licensee to provide a minimum amount of local programming will ensure that applicants are rooted in the community. Further, strictly enforcing the current underwriting obligations of noncommercial broadcasters will preserve the integrity of the service.

The FCC should adopt its proposal to allow entities that previously broadcast without a license to apply for a station if they stopped broadcasting after the FCC's low power proposal was officially released to the public. *See NPRM* at ¶67. UCC, *et al.* by no means support illegal self-help measures such as broadcasting without a license. Many potentially legitimate low power radio broadcasters may have begun broadcasting illegally without a license without realizing the implications of their actions. To avoid years of pointless litigation, and to allow as many potential broadcasters as possible on the air, the Commission should adopt its most lenient proposal.

VI. The Commission Must Adopt a Fair and Administratively Simple Allocation Scheme.

UCC, *et al.* propose a two-track allocation method for noncommercial applicants. The first track should include organizations such as churches, schools, libraries, and community access organizations. The second track should utilize a lottery using the statutorily-mandated preferences

³⁰ We note that we do favor a preference for certain educational applicants, along with an equal preference for entities that will be likely to serve the community. *See infra.*

for minority-controlled organizations. For commercial applicants, UCC, *et al.* propose an auction with bidding credits for applicants that are small entities.

A. The Commission Should Prioritize Applicants that Will Maximize Community Access to the Airwaves and Use a Lottery to Distribute All Other Licenses.

1. Noncommercial Allocations

As outlined in detail below, the Commission should adopt a plan that balances between assigning licenses to organizations that will promote broad community access to the airwaves and allowing all applicants a fair chance to obtain a license. Therefore, the Commission should first prefer organizations such as churches, schools, libraries, and community access organizations. The Commission should then distribute remaining licenses using lotteries. Although this proposal is far from an ideal system, the sheer magnitude of the number of applicants and the difficulty of applying a better, more substantive evaluation criteria compels us to support a solution that will both grant substantial community access and ensure speedy implementation. UCC, *et al.* look forward to reviewing the comments in this docket to craft a sound allocation process.

The Commission should adopt a two track allocation approach. The first track should include organizations such as churches, schools, libraries, and community access organizations. At least one license in any geographic area, defined as either a Designated Market Area³¹ or an Metropolitan Area,³² should be assigned to this track. In order to adopt a workable application process, the

³¹ A Designated Market Area ("DMA") is formulated by the A.C. Nielsen Company for radio advertisers, and consists of counties that can be grouped together for the purpose of viewing patterns. *See Review of Commission's TV Ownership Rules*, 11 FCC Rcd 21655 at n.12 (1995).

³² A Metropolitan Area ("MA") is defined by the Office of Management and Budget to locate a population nucleus, together with adjacent communities, that have a high degree of economic and social integration. *See* Department of Commerce, U.S. Census Bureau, *About Metropolitan Areas*, (visited July 30, 1999) <<http://www.census.gov/population/www/estimates/aboutmetro.html>>.

definitions of these "first track" entities must be very clear and easy to verify. We propose defining churches as any entity that has identified itself as such to the Internal Revenue Service on IRS Form 1023. *See also* IRC §501(c)(3). We propose to adopt the definitions of schools and libraries adopted by the Commission for its universal service program under 47 CFR §54.501(b) and (c). We propose to define community access organization as those 501(c)(3) organizations authorized to operate a PEG allocation under Section 611 of the Communications Act. These definitions are straightforward and easily identifiable, therefore they are suitable for a simple certification application process.

If the number of track-one applicants for a particular station exceeds available licenses, the Commission should adopt a simplified comparative point system. The point system would award credit to applicants who demonstrate they are most likely to serve community needs. An applicant would receive one point for providing more than 75% locally-originated programming, and two points for providing more than 90% locally-originated programming. To facilitate sharing of licenses in regions where insufficient licenses are available, applicants that are consortia of more than 3 otherwise-eligible entities should receive 2 points. Given that insufficient licenses will be available, stations should receive one point each if they provide an opportunity for members of the public to obtain air time. In order to receive credit for this point, a station must set aside at least 10 hours per week in which members of the general public may obtain air time on a first-come, first-served basis.³³

An applicant should also receive a point if it receives more than 30% of its funding from sources within its service area. Points should be awarded for local funding because such funding demonstrates community support for a station.

³³ The licensee should be able to exercise control over the content of these broadcasts only for the purposes of compliance with FCC indecency and obscenity policies and to protect itself against liability for libelous or slanderous speech.

Applicants for the second track stations should be allocated by lottery, as governed by Section 309(i) of the Communications Act. 47 USC §309(i)(3)(A). UCC, *et al.* has strong reservations regarding the use of lotteries in general. Nevertheless, given the significant resource constraints of the Commission, the importance of bringing this service to fruition as quickly as possible, and the difficulties the Commission faced when authorizing the LPTV service, *NPRM* at ¶93, UCC, *et al.* believe that lotteries are suitable in this instance.

Section 309(i) of the Act requires the Commission to grant a "significant preference" to "any applicant controlled by a member or members of a minority group."³⁴ *Id.* To implement this requirement, the Commission should apply the 2:1 ratio for minority-controlled organizations proposed by the Commission in its *Noncommercial Comparative Standards NPRM*, 13 FCC Rcd 21167 at ¶13 (Oct. 1998). Minority-controlled organizations should be organizations whose boards consist of at least 50 percent of a minority group, as defined under Section 1.1621(b) of the Commission's rules. The attribution standards proposed herein should provide sufficient safeguards against organizations which are minority-controlled *de jure*, but are in fact controlled by another organization. *See id.* at ¶15.

2. Commercial Allocations

If the Commission adopts a commercial low power service, it should adopt bidding credits for small entities, evaluated utilizing an asset or gross revenue standard. As the Commission notes, Section 3002(a)(1) of the Balanced Budget Act of 1997 requires the Commission to auction

³⁴ The Commission is also required to grant a "significant preference" to "applicants or groups of applicants . . . which . . . would increase the diversification of ownership of the media of mass communications." This preference, however, would be meaningless among applicants who do not own or control any other broadcasting interests.

mutually-exclusive commercial license applications. *NPRM* at ¶104. Section 309(j) of the Communications Act, however, provides that the Commission "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." 47 USC §309(j)(4)(D). To achieve this congressional goal, the statute directs the Commission to "consider the use of tax certificates, bidding preferences, and other procedures." *Id.* In *Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, et al.*, 13 FCC Rcd 15920 (1998), the Commission implemented this Congressional mandate by adopting bidding credits for small entities. *Id.* at ¶189. The same measures should be adopted for commercial low power service. Such a policy would benefit women, minorities and new entrepreneurs without using a race or gender specific preference, thus mooting much of the criticism directed toward other policies favoring members of underrepresented groups. Without incentives like bidding credits, these groups have an extremely difficult time breaking into the concentrated industry because of high prices and other barriers. Moreover, there are no significant costs to providing such bidding incentives. Indeed, a recent study has shown that using bidding credits actually increases government revenue by creating increased competition in auctions.³⁵ Thus, the many benefits and incentives can be achieved with little or no cost.

B. The Commission Cannot Rely on Electronic Applications Alone and Should Adopt a Lengthy Filing Window.

The Commission cannot achieve a new, democratic low power radio service if it adopts mechanisms to allocate licenses that exclude the most disenfranchised members of our society. The

³⁵ See Ian Ayres & Peter Cramton, *Deficit Reduction Through Diversity: How Affirmative Action at the FCC Increased Auction Competition*, 48 Stan. L. Rev. 761, 763 (1996).

Commission should reject its proposals to rely exclusively on electronic applications, should not adopt a first-come, first-served application system, and should adopt a filing window of several months to maximize the number of low power applicants. *NPRM* at ¶¶94-102.

Several of the Commission's proposals for processing applications for low power stations will have the effect of excluding a broad, diverse base of applicants. As detailed above, *UCC, et al.* favor lotteries, with statutorily-governed procedures requiring minority preferences, to assign low power licenses. This administratively simple method alleviates much of the Commission's concerns with processing a large number of applications. Thus, *UCC, et al.* favors a system that will maximize the number of applicants so that as many entities as possible may be considered for a station.

The application procedure should include a predetermined filing window period of several months, at a minimum. In order to allow widespread knowledge of filing windows and to avoid the inexcusable delay associated with Commission-scheduled windows, the Commission should adopt a filing window that will be consistent from year to year. For example, applications should be filed every year during November and December.³⁶ The FCC should ensure the public is informed, well in advance, of these dates. The FCC cannot rely on electronic means alone to distribute information. For example, the Commission should work with national associations, such as the many groups founded to promote low power radio and the parties on this pleading, to publicize filing deadlines. In addition, the Commission should use press releases and the local media to ensure that members of the public are informed about deadlines. To avoid overfiling, the Commission must adopt a limit of one application per entity.

³⁶ If possible, the Commission should coordinate these filing deadlines with other relevant deadlines such as NTIA's deadline for PTFP grants or CPB's funding deadlines, if applicable.

Adopting short filing windows of a few days, as the Commission suggests, *NPRM* at ¶¶96-97, is no better than adopting a first-come, first-served approach. Such an approach will encourage a rush to file and will favor the largest and most well-funded entities who can assemble and submit applications more quickly than smaller groups.³⁷

An electronic application system is acceptable, but it cannot be the only method by which parties can receive a license. *NPRM* at ¶91. Although the Commission cites its decision to accept electronic full power broadcast applications electronically in support of using electronic filing for low power radio licensees, *NPRM* at ¶94, n.108, a typical full power broadcaster is much more likely to have access to technology than a potential low power broadcaster. Furthermore, the communities that will be most in need of a low power radio station may be the least likely to have access to computer technology.³⁸ NTIA's most recent report shows that two-thirds of Americans lack Internet access. *Falling Through the Net: Defining the Digital Divide*, National Telecommunications and Information Agency, Department of Commerce (July 1999) at 43. The NTIA report demonstrates that people with the lowest income and the least education rely most heavily on public libraries to access the Internet, *Falling Through the Net* at 36-37, but according to the American Library Association, only seventy-three percent of libraries offer public on-line access. *The 1998 National Survey of Public Library Outlet Internet Connectivity*, American Library Association, Office for

³⁷ The FCC used similar reasoning to tentatively reject using a "finder's preference" in the non-commercial comparative standards proceeding. In that proceeding, the Commission reasoned that a preference for the first filer could result in a rush to apply for licenses and would "create an artificial demand to apply for frequencies prematurely" See *NCE Comparative Standards NPRM*, 13 FCC Rcd 21167 at ¶25 (1998).

³⁸ The ready accessibility of radio by many members of the population is one reason why radio service meets a need that, for example, Internet access cannot. See *supra* Section I.A.1.

Information Technology Policy at 2 (October 1998). Finally, although UCC, *et al.* support continued Commission efforts to realize the benefits of technological advances, the Commission has not yet developed the capability to process thousands of low power radio applications electronically.

If the Commission adopts a lengthy filing window of several months and employs a simple paper application that uses the same yes/no questions that would be used in an electronic application, the administrative burdens of processing paper applications will be relatively low. If the Commission believes that low power applicants will overwhelm the Commission with paper, it may consider requiring applicants using a paper application to certify that they are unable to gain access to an electronic application mechanism.

Conclusion

The Commission has created an historic opportunity to re-democratize the airwaves. It cannot squander this opportunity by allowing the new low power radio service to become a smaller reflection of the corporate-controlled, commercialized full-power service. For this reason, the Commission should adopt the proposals presented herein.

Respectfully submitted,

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