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February 3, 1995

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: MM Docket No. 93-165
RM-8247
Athens, Ohio

Dear Mr. Caton:

Transmitted herewith on behalf of Nelsonville TV Cable, Inc. are an original and four copies of its Opposition to Petitions for Reconsideration in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with the undersigned.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.

Anne Goodwin Crump

Anne Goodwin Crump
Counsel for Nelsonville TV Cable, Inc.

Enclosures
cc: John A. Karousos, Acting Chief, Allocations Branch (with enclosure) **By Hand Delivery**

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 93-165
Table of Allotments,	)	RM-8247
FM Broadcast Stations	)	
(Athens, Ohio).	)	

OPPOSITION TO PETITIONS FOR RECONSIDERATION

Nelsonville TV Cable, Inc. ('NTVCI"), by its attorneys, hereby respectfully submits its Opposition to the Petitions for Reconsideration in the above-captioned proceeding submitted by Lakeside Broadcasting, Inc. ("Lakeside") and David W. Ringer ("Ringer"). With respect thereto, the following is stated:[1]

1. On November 23, 1994, the Commission released an Order, DA 94-1270, which opens a new filing window for the channel allotted to Athens, Ohio, pursuant to the above-captioned proceeding. NTVCI intends to file an application in response to this window notice. That application is in the final stages of preparation.

2. Lakeside and Ringer contend in their petitions for reconsideration, however, that the Commission should not have opened the new filing window. On January 25, 1994, the Commission released a Report and Order, DA 93-1584, wherein it allotted Channel 240A to

[1]Public notice of the filing of the Petitions for Reconsideration was published in the Federal Register on January 19, 1995 (60 Fed. Reg. 3866). Accordingly, this Opposition is timely filed.

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Athens and opened a window for the filing of applications beginning on March 11, 1994, and ending on April 11, 1994. On February 25, 1994, during the time between the release of the Report and Order and the scheduled opening of the filing window, the Commission released a Public Notice, 9 FCC Rcd. 1055 (1994), freezing the processing of all applications for new broadcast facilities (the "Freeze Order"). The Commission further stated that "during the freeze, the Mass Media Bureau will not issue cutoff lists or adopt FM filing windows for new filing opportunities....Any such cutoff lists or orders adopted prior to the imposition of this freeze will be suspended for the period of the freeze." Id. Nevertheless, Lakeside, Ringer, and two other applicants filed applications for the Athens channel by April 11, 1994.

3. Lakeside and Ringer now argue that the Freeze Order did not effectively suspend orders establishing filing windows which had been published in the Federal Register because the Freeze Order itself was not published in the Federal Register. Lakeside and Ringer, however, clearly had actual notice of the Freeze Order. Neither party makes any claim to the contrary. The Freeze Order was released prior to the scheduled first day for submitting applications for the Athens allotment. Moreover, it is unclear what prejudice any possible lack of notice of the suspension of the filing window could cause them. Both Lakeside and Ringer submitted applications by the originally scheduled closing date of the window. Those applications were returned to them without prejudice to their refiling during the current filing window.

4. While it is true that at least one additional party, NTVCI, plans to submit an application during the current filing window, Lakeside and Ringer had no right to expect that only a certain number of applications would be filed during the filing window as originally scheduled. NTVCI knows of at least one party, itself, which also would have submitted an

application for the Athens allotment but for the suspension of the filing window. Lakeside and Ringer have no way of knowing how many other parties fall into the same category. They are not prejudiced by allowing those parties who would have filed applications but for the suspension of the filing window to submit applications at this time. Although it is theoretically possible that some additional parties are now interested in submitting an application, it is equally probable that parties previously interested in the allotment will have lost either their interest or their ability to file an application during the intervening months. Thus, Lakeside and Ringer are simply placed in the same position they would have been in absent the filing window.

5. If, on the other hand, the Commission were to rescind its Order establishing the current filing window, NTVCI would be unfairly prejudiced. Like Lakeside and Ringer, NTVCI received actual notice of the Freeze Order Unlike these parties, NTVCI then acted in reliance upon that Freeze Order. Because the Commission indicated that filing windows for new FM stations would be suspended, NTVCI rationally decided that it would not file an application for the Athens allotment at that time but rather would wait until the filing window was re-opened. When the Commission in due course did announce a new filing window, NTVCI began to prepare an application, and is now in the final stages of its preparation. If the Commission were to rescind its order establishing this window, NTVCI would be unfairly prevented from filing its application and would have been induced to expend funds on the preparation of an application which NTVCI could not have known would be unacceptable. The Commission's Freeze Order indicates that NTVCI and other similarly situated parties would have an opportunity to file applications at a later date. NTVCI relied upon that promise. It would be fundamentally unfair for the Commission now to deny the promised filing opportunity, especially when the effect

would be to benefit other parties which did not observe the Freeze Order.

6. Contrary to Ringer's assertion, the Freeze Order's intent is quite clear on its face. As set forth above, the Commission stated that "during the freeze, the Mass Media Bureau will not issue cutoff lists or adopt FM filing windows for new filing opportunities....Any such cutoff lists or orders adopted prior to the imposition of this freeze will be suspended for the period of the freeze." 9 FCC Rcd. 1055. In this context, "such ... orders" can refer only to orders adopting FM filing windows. Thus, the Commission explicitly stated that orders opening FM filing windows which were adopted before imposition of the freeze would be suspended during the freeze. The Report and Order in this proceeding was such an order adopted before imposition of the freeze. Therefore, the only logical conclusion is that the Report and Order was suspended. If the order adopting the filing window was suspended, then it follows that the filing window itself was suspended. The Athens filing window had not yet opened at that time. The fact that the Commission did not in so many words state that the Athens filing window was suspended is irrelevant, since the applicability of the Freeze Order to the Athens proceeding was clear. NTVCI was entitled to rely upon the logical interpretation of the Freeze Order, which indicated that the opportunity to submit an application for the Athens allotment would come at a later date, and NTVCI did so rely upon the Commission's statements. The Commission cannot now deny NTVCI its opportunity to file based solely upon the confusion of other parties.

WHEREFORE, the premises considered, NTVCI respectfully requests that the Commission deny the petitions for reconsideration filed by Lakeside and Ringer and that it affirm its November 23, 1994, Order establishing a filing window for Channel 240A at Athens, Ohio.

Respectfully submitted,

NELSONVILLE TV CABLE, INC.

By: Anne Goodwin Crump
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Its Attorneys

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February 3, 1995

CERTIFICATE OF SERVICE

I, Roberta Wadsworth, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., certify that on this 3rd day of February, 1995, copies of the foregoing "Opposition to Petitions for Reconsideration" were mailed, postage prepared to the following:

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