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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of Section 309(j) of the	)	MM Docket No. 97-234
Communications Act – Competitive Bidding	)	
for Commercial Broadcast and Instructional	)	
Fixed Service Licenses	)	
	)	
Reexamination of the Policy Statement	)	GC Docket No. 92-52
on Comparative Broadcast Hearings	)	
	)	
Proposals to Reform the Commission’s	)	GEN Docket No. 90-264
Comparative Hearing Process to	)	
Expedite the Resolution of Cases	)	

**TO:** The Commission

**Comments of the  
National Association of Broadcasters**

The National Association of Broadcasters (“NAB”)<sup>1</sup> submits these comments on the *Notice of Proposed Rulemaking* in this proceeding. In the *Notice*, the Commission proposes – for the first time in its history – procedures to use auctions to decide among competing applications for new broadcast facilities. In the Balanced Budget Act,<sup>2</sup> Congress provided the Commission with authority to auction broadcast licenses. Whether introducing auctions into broadcasting will prove good or ill is something only time will reveal. Congress having made its decision, NAB will address only a few of the issues addressed in the *Notice*.

<sup>1</sup> NAB is a nonprofit, incorporated association of radio and television stations and broadcasting networks. NAB serves and represents the American broadcasting industry.

<sup>2</sup> Pub. L. No. 105-33, 111 Stat. 251 (1997).

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The Commission seeks comment (*Notice* ¶¶ 47-48) on whether applications for modification of existing broadcast facilities – both major and minor – should be resolvable by auction if they prove to be mutually exclusive with another application. NAB believes that the Commission should strive to avoid subjecting applications for modification of existing facilities to competitive bidding. Broadcasters may seek authority to modify their facilities for many reasons, but typically they reflect efforts to improve the quality of their service to the public by providing either better signal quality or ensuring that their signals are available to more people. Broadcasters who are seeking to continue their licensed operations should not be required to bid against others – including applicants for new facilities – in order to do so.

There is certainly no indication that Congress gave any consideration to modification applications when it provided for auctions for broadcast facilities. Instead, Congress' expressed concerns were exclusively with competing applications for new facilities and the well-known problems of the FCC's comparative hearing process. Congress' objectives would not be thwarted, therefore, if the Commission were to exclude modification applications from the competitive bidding process.

We note that modification requests have not frequently had to be resolved by full comparative hearings, and it appears that most disputes over modification applications have been handled using other means. Section 309(j)(6)(E) of the Act, which was unchanged by the Balanced Budget Act, requires the Commission "to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings." Modification applications are a particularly appropriate category for the Commission to seek alternative resolutions. If a request for

modification of existing facilities becomes mutually exclusive, the Commission should provide for the staff to work with the parties to eliminate mutual exclusivity. If a technical solution cannot be found, the Commission should permit the use of alternative dispute resolution techniques or other settlement avenues before considering competitive bidding.

For similar reasons, the Commission should not require licensees who want to modify their facilities to wait for a filing window. Unlike opportunities to apply for new facilities, which are generally created by the FCC making available open channels, the need for a license modification will most often be determined by the needs and plans of individual licensees, and perhaps may be engendered by the need to replace damaged or obsolete equipment. Licensees should not have to wait for the Commission to open up a filing window before they can proceed with their plans. Particularly if the Commission agrees that efforts should be made to resolve applications to modify facilities without an auction, it would be inefficient to treat them in the same manner as applications which generally will be resolved only by competitive bidding.

This should also lead the Commission to provide for pre-acceptance processing of the engineering data submitted with modification requests as proposed in Paragraph 70 of the *Notice*. Only if the Commission makes a determination concerning the extent of mutual exclusivity can it seek to resolve application conflicts.

NAB also comments briefly on the Commission's proposal (*Notice* ¶ 52) to use simultaneous multiple-round bidding as the design for broadcast auctions. The Commission has found this auction design appropriate where it is at one time auctioning off licenses across the country for one type of service and there appear to be clear efficiencies of scale to be obtained from acquiring groups of licenses. Most auctions of new broadcast licenses, however, will be for

scattered facilities, and there is far less likelihood that bidders will seek groupings of licenses. Thus, the Commission may find that sequential auctions in which bids for individual licenses are accepted separately will prove more appropriate for broadcast auctions. Because applicants for new broadcast stations may be smaller entities and have less access to experienced communications advisers, providing for simple, easy to understand, auction processes may encourage participation in the bidding for new broadcast facilities.

### **Conclusion**

For the foregoing reasons, the Commission should not subject applications for modification, either major or minor, of existing broadcast stations to competitive bidding. At a minimum, the Commission should provide opportunities for applicants and the Commission's staff to resolve any mutually exclusive situations before an auction is ordered. Finally, the Commission should consider

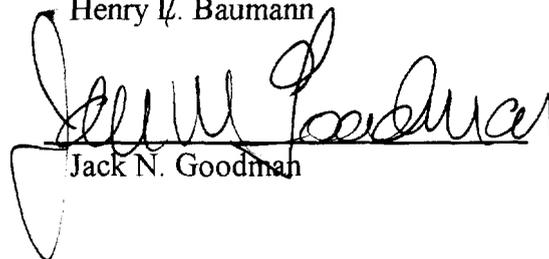
using a simple auction model for broadcast auctions, rather than assuming that the more complex models developed in bidding for wireless telephone services are appropriate to choose among mutually exclusive applications for individual broadcast facilities.

Respectfully submitted,

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