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January 26, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Implementation of Section 309(j) of
the Communications Act
MM Docket No. 97-234
GC Docket No. 92-52
GEN Docket No. 90-264

Dear Ms. Salas:

We hand you herewith, on behalf of The Scranton Times, L.P. and Shamrock Communications, Inc., an original and four copies of Comments in response to the Notice of Proposed Rulemaking in the above-referenced dockets.

Should you have any questions regarding this submission, please contact the undersigned.

Sincerely,

WILKINSON, BARKER, KNAUER & QUINN, LLP

Christine V. Simpson

By: Christine V. Simpson

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

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

TO: The Commission

COMMENTS

The Scranton Times, L.P. ("Scranton Times") and Shamrock Communications, Inc .("Shamrock"), by their attorneys, respectfully submit these comments in response to the Notice of Proposed Rulemaking released on November 26, 1997 in the above-captioned matter ("Notice"). The Scranton Times and Shamrock ("Scranton-Shamrock") are family-owned, commonly-controlled entities and are the licensees of numerous radio stations. [1] As explained more fully below, Scranton-Shamrock is seriously concerned that the Commission is considering reopening previously closed windows to permit additional applicants to participate in the auctioning of broadcast spectrum. Scranton-Shamrock strongly believes that such a proposal is

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[1] The Scranton Times is the licensee of WEJL(AM) and WEZX(FM), Scranton, Pennsylvania, WBAX(AM), Wilkes-Barre, Pennsylvania, and WQFM(FM), Nanticoke, Pennsylvania. Shamrock is the licensee of WGRX(FM) and WTTR(AM), Westminster, Maryland, KJFK(FM), Lampasas, Texas, KMYZ(FM), Pryor, Oklahoma, and KCFM(FM), Okmulgee, Oklahoma. It also has an ownership interest in WLUM(AM), WMCS(AM), and WJZI(FM), Milwaukee, Wisconsin.

blatantly unfair to those parties who timely filed their pending applications and should be promptly rejected. Moreover, the Commission should permit those parties who have timely filed applications to enter into settlement agreements pursuant to Section 311(c) of the Act prior to the filing of short-form applications looking toward auctions.

The Commission's Notice

In the Notice, the Commission is seeking comment on its implementation of the statutory requirements set forth in Section 309(j)(1) of the Communications Act, as amended by the Balanced Budget Act of 1997, to use auctions to resolve mutually exclusive applications for initial licenses for broadcast stations. In paragraphs 39-45 of the Notice, the Commission discusses its proposals for mutually exclusive pending applications which were filed after June 30, 1997. [2]

Closed Windows Should not be Opened

Specifically, the Commission notes that Section 309(l) of the Act expressly provides that pre-July 1, 1997 applicants shall be the only applicants eligible to participate in an auction of spectrum sought in those pre-July 1, 1997 applications. [3] It then notes that in contrast

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[2] Pending applications filed before July 1, 1997 are governed by Section 309(l) of the Communications Act, added by the Balanced Budget Act of 1997. Section 309(l) requires that the Commission waive its regulations to approve settlement agreements filed by February 1, 1998. See Notice at paragraphs 25-28.

[3] See Notice at paragraph 42. Section 309(l) states "With respect to competing applications for initial licenses or construction permits for commercial radio or television stations that were filed with the Commission before July 1, 1997, the Commission shall — (3) treat the persons filing such applications as the only persons eligible to be qualified bidders for purposes of such proceeding;..."(emphasis added).

to new Section 309(l), Section 309(j)(1) is silent on the question of who can participate in an auction of spectrum sought in post-June 30, 1997 applications. [4] The Notice states:

> Thus, we appear to have discretion as to whether we conduct a closed auction that is limited to these pending mutually exclusive applications, or whether we include these applications within our first general broadcast auction, and permit new applicants to file additional applications that may be mutually exclusive with the pending applications.[5]

Scranton-Shamrock strongly believes that the Commission should not permit new applicants to file additional applications that may be mutually exclusive with pending applications filed after June 30, 1997 for which the windows have closed.

By way of background, the Scranton Times has applications pending which were filed after June 30, 1997 which seek authority to construct new FM stations. The windows for these applications were the subject of publicly noticed rulemaking proceedings, and reports and orders allocating the frequencies to the respective communities were released to the public more than two months prior to the closing of the windows. Indeed, competing parties timely filed applications in these windows, and the Scranton Times was actively engaged in discussions with them in an attempt to resolve their differences at the time the Notice was released.

Scranton-Shamrock asserts that it would be a manifest injustice and a disservice to the public interest to permit additional parties to file applications now for these facilities. First, there was ample public notice of the window deadlines, and such parties could have filed applications in these windows and did not. Thus, there is no argument that unfairness would result from keeping these closed windows closed. On the contrary, however, re-opening these

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[4] Id.

[5] Id.

closed windows could severely prejudice those who timely filed in the windows. Those applicants will face greater difficulties at auction to obtain the facilities, or more time and effort (including money) would have to be expended to broaden settlement discussions to include such additional applicants.[6]

Perhaps most importantly, any plan to reopen closed windows at this time would be contrary to the public interest. This is because new applicants would undoubtedly delay the resolution of conflicts — in many markets discussions among existing parties are well underway — further delaying implementation of new service to the public. In addition, there is at least a reasonable probability that legal challenges would ensue if such a proposal were adopted. These delays are in direct conflict with the very policies that Congress is trying to advance with the auction proposals which underlie this Notice — the prompt and efficient award of broadcast licenses. The Commission should not re-open closed windows.

Pre-Auction Settlements Should be Permitted

In paragraph 45 of the Notice, the Commission tentatively proposes that before the deadline for filing short-form applications, pending post-June 30, 1997 applicants may enter into settlement agreements pursuant to Section 311(c) of the Act and the Commission's rules. It tentatively concludes that permitting such settlements prior to the filing of the short-form application is adequate to protect the integrity of the competitive bidding process and consistent with the anti-collusion rules. Scranton-Shamrock supports this proposal.

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6 Moreover, permitting such additional filings at this time would create greenmail opportunities for unscrupulous parties who, despite the Commission's limitations on reimbursement, could seek to profit from their filings during the pre-auction settlement period. Furthermore, the unfairness of permitting additional applicants to file at this time in closed windows would be exacerbated by permitting them to file short-form applications. Pending applicants have gone to the significant expense of preparing complete FCC Form 301 applications and have paid the full FCC filing fee of $2,470.

More specifically, Scranton-Shamrock favors such a proposal because it will allow parties to settle conflicts among their applications promptly where feasible and spare Commission resources by rendering an auction unnecessary. Collusion concerns are unlikely prior to bidding. Moreover, there is still sufficient Commission oversight of such settlements under Section 311(c) of the Act and Commission rules to prevent inappropriate arrangements. For this reason, Scranton-Shamrock believes pre-short-form settlements should be permitted.

## Conclusion

Scranton-Shamrock urges the Commission not to reopen closed windows for broadcast applications. It should consider only those post-June 30, 1997 applicants who have filed in such windows which are now closed to be eligible to bid in auctions for the spectrum sought in such applications and, by extension, the only applicants eligible to enter into settlement agreements to remove conflicts from those applications. In addition, the Commission should permit applicants to enter into settlement agreements prior to the filing of short-form applications because it will not violate anti-collusion rules, and it will permit more prompt institution of service to the public.

Respectfully submitted,

THE SCRANTON TIMES, L.P.
SHAMROCK COMMUNICATIONS, INC.

By: Christine V. Simpson

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Their Attorneys

January 26, 1998

CERTIFICATE OF SERVICE

I, Marilyn D. Garrett, a secretary in the law firm of Wilkinson, Barker, Knauer & Quinn, LLP, hereby certify that pursuant to the instructions in paragraph 109 of the Notice of Proposed Rulemaking in MM Docket 97-234, GC Docket 92-52, GEN Docket 90-264, I have this 26th day of January, 1998 served a copy of the attached Comments by hand delivery upon the following:

Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 702
Washington, D.C. 20554

Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 302
Washington, D.C. 20554

Office of the General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 610
Washington, D.C. 20554

Marilyn D. Garrett

Marilyn D. Garrett