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

In the Matter of	)	
	)	
Implementation of Section 39(j)0 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

COMMENTS OF MABLETON INVESTMENT GROUP

Mableton Investment Group ("MIG"), hereby offers the following limited comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned matter.

I. Interest of MIG

MIG is not itself an applicant before the Commission but it is a participant in the settlement of the Mableton FM proceeding (Gonzales Broadcasting, Inc., MM Docket No. 88-400). In that proceeding, the Commission has approved a settlement among six of the seven applicants, denied on basic qualifications grounds the application of the sole non-settling applicant[1] and granted the application of Gonzales Broadcasting, Inc., upon which the settlement is based. The proposed auction rules would not apply

[1] That applicant has sought Court review of that denial, which is pending. Lorenzo Jelks vs. F.C.C., Case No. 97-1544 (D.C. Cir.).

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to the Mableton proceeding unless the dismissed applicant obtains reversal of the Commission's denial of its application.

These comments are limited to the manner in which the proposed auction rules should apply to pending cases where hearings have already been held. We do not address the question of whether a set of comparative criteria could be devised to resolve these proceedings as we are doubtful that significant criteria related to legitimate licensing goals can be devised which would serve to meaningfully distinguish between applicants and which could be applied fairly to applications originally filed under a different comparative regime. Rather, we submit that unless these older, heavily litigated proceedings can be resolved by means of procedures such as those discussed below, the public interest would be best served by conducting an auction.

II. The Equities of Existing Parties.

In many instances, the 20 proceedings referred to by the Commission in paragraph 22 of the Notice have been in litigation for ten years or more and the parties have incurred expenses of many hundreds of thousands of dollars. In the Mableton proceeding, for example, the six settling parties have indicated in their several joint requests for approval of the settlement agreements that their cumulative expenses exceeded two million dollars. In that proceeding the record reflects extensive pre-hearing motions and discovery, an extensive initial hearing followed by an appeal with additional discovery and a further

hearing on numerous remanded issues. This was followed by a second appeal to the Review Board and applications for review of the Board's decision by the Commission. For cases such as these, because of the years of effort and immense expenditure of resources involved, recourse to auctions should be a last resort. As noted by the Commission, in eight of the cases, the Commission has already rendered a decision and in 12 others, decisions have been reached by the administrative law judge or the Review Board. Thus, there is a very limited body of cases to which the procedures discussed below would apply.

III. Suggested Procedures for Resolving These Cases.

As we understand the Notice, if a proceeding is pending before the Commission that has not been resolved through the grant of one of the applications or through settlement, the Commission will conduct an auction among the applicants. Any pending basic qualifications issues[2] would be resolved only with respect to the winning bidder after the auction. While we believe that this procedure is appropriate where mutual exclusivity between applications cannot otherwise be resolved, we respectfully suggest that in some cases mutual exclusivity may be eliminated without an auction by adjudicating unresolved basic issues.

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[2] The Commission has not defined what it considers to be an "unresolved" issue, but we assume that it is one which has been raised in a hearing or by petition to deny as to which no decision has been issued, or a decision has been issued which has not become final because further review before the Commission or the Court is pending or the time for seeking such review has not expired.

Thus, where a proceeding might be finally resolved through adjudication of basic non-comparative issues against one or more applicants, the Commission should resolve those issues. This would occur where no more than one applicant for a particular frequency was free of unresolved basic qualifying issues but other applicants had such basic issues pending. If two applicants had no basic issues pending with respect to their applications, there would be no point to then resolving issues with respect to other applicants as the entire proceeding could not be resolved by those procedures.

Where a proceeding potentially could be resolved through adjudication of basic issues, the Commission should do so in accordance with the existing procedures set forth in the rules. If after the basic issues are resolved, only one applicant (either individually or as the surviving applicant in a partial settlement) is determined to be basically qualified, that applicant would be granted the permit. If more than one applicant is found to be basically qualified,[3] an auction then would be held. If all applicants are found to lack basic qualifications, the frequency could be made available for new applications.

Adoption of these procedures provides the potential for resolving these cases under existing Commission policies without

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[3] Because a finding that a challenged applicant was basically qualified would result effectively in the termination of the hearing proceeding, Court review of the Commission's decision finding an applicant qualified should be permitted prior to any auction. If the Court reverses or remands the Commission's determination, the proceeding might still be capable of resolution without an auction.

the need to develop new comparative criteria. These procedures also will encourage settlement in these old cases by permitting a partial settlement to be approved where the non-settling party has unresolved basic issues pending against it, as was the case in the Mableton proceeding.

IV. Conclusion

We recognize that these procedures may not permit resolution of all of these twenty cases and even after such further proceedings, an auction may be necessary for some proceedings. Nevertheless, we respectfully submit that these procedures appropriately recognize the equities of the parties who are most adversely affected by a change of policy in the midst of litigation and permit a more fair transition to an auction environment.

Respectfully submitted,

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Dated: January 26, 1998

Certificate of Service

The undersigned hereby certifies that copies of the foregoing Comments of Mableton Investment Group were served this 26th day of January, 1998, by First Class U.S. Mail, postage pre-paid on:

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