FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF GENERAL COUNSEL

memorandum

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TO: Chief, Reference Operations Division

FROM: Daniel M. Armstrong Daniel M. Armstrong
Associate General Counsel

SUBJECT: Lindsay Television, Inc. v. FCC, D.C. Cir. No. 98-1105; Community Television, Inc., et al. v. FCC, D.C. Cir. No. 98-1106; Minority Television Project Inc./KMTP-TV, San Francisco v. FCC, Ninth Cir. No. 98-70356; and Black Television Workshop of Los Angeles, Inc./KEEF-TV, Los Angeles v. FCC, Ninth Cir. No. 98-70359. Filing of four new Notices of Appeals in the United States Court of Appeals for the District of Columbia and Ninth Circuits.

DATE: April 17, 1998

This is to advise you that Lindsay Television, Inc., and Community Television, Inc., et al., on March 25, 1998, filed 402(b) Notices of Appeal of the Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order and Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order in Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, MM Docket No. 87-268, FCC 98-23 and FCC 98-24 (released February 23, 1998) in the U.S. Court of Appeals for the District of Columbia Circuit. Also, on March 25, 1998, Minority Television Project Inc. and Black Television Workshop of Los Angeles, Inc. filed 402(b) Notices of Appeal of the Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order only, in the U.S. Court of Appeals for the Ninth Circuit.

In Case No. 98-1105, Lindsay Television, Inc. complains that the FCC did not allot a DTV channel as a counterpart to the Charlottesville analog channel for which it has had a construction permit application pending for twelve years.

In Case No. 98-1106, Community Television, Inc. claims that the FCC erred in not providing DTV channels in seven communities for reserved analog channels for which Community has pending construction permit applications proposing new noncommercial educational broadcasting service. In addition, Community, Carolina Christian Broadcasting, Inc., and McLaughlin Broadcasting, Inc. operate existing stations for which paired DTV channels have been allotted. These parties protest the FCC's decision not to take their pending applications for facilities upgrades into account in making their respective DTV allotments; they also assert that the FCC processed the upgrade applications of similarly situated parties and accorded them "preferential treatment in securing a digital channel."

The petitions filed in the Ninth Circuit do not elaborate on the specific grievances of the parties. The Ninth Circiut cases were filed on the same day as the D.C. Circuit cases, but time stamps on some of the documents indicate that the D.C. cases were first-filed. We will soon file motions to consolidate all four cases in the D.C. Circuit.

The Courts have docketed these cases as Nos. 98-1105, 98-1106, 98-70356 and 98-70359. The attorney assigned to handle the litigation of these cases is Michele Walters.

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