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

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In the Matter of )  
)  
1998 Biennial Regulatory Review – )  
Streamlining of Mass Media Applications, )  
Rules, and Process )

MM Docket No. 98-43

**COMMENTS OF  
THE NATIONAL ASSOCIATION OF BROADCASTERS**

**NATIONAL ASSOCIATION OF  
BROADCASTERS**

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## EXECUTIVE SUMMARY

NAB submits the following comments in response to the *Notice of Proposed Rule Making* in MM Docket No. 98-43. These comments generally support FCC proposals that will reduce procedural and substantive burdens on both the Commission and broadcasters.

NAB agrees that electronic filing of applications will provide efficiencies for the Commission; however, the FCC must consider the wide variety of applicants that will be using an electronic filing system. NAB suggests the Commission allow all applicants to file applications either over the Internet or on a computer diskette. Providing an option will still allow the Commission its efficiencies, but will also allow flexibility for broadcasters. The FCC must phase-in any mandatory electronic filing system. There must be an adequate transition period for all participants to work out any problems. Additionally, the Commission should allow a limited exemption from electronic filing for those broadcasters who certify that they do not have a computer or the capability to pay for any service to file electronically.

NAB suggests that the Commission seek re-evaluation of the applicable application fees from Congress due to the efficiencies that will be realized through a streamlined process. As an incentive to broadcasters to use such an electronic filing system, the FCC should also seek the approval of *reduced* application fees for electronic filers during a transition period, as opposed to *increased* application fees for paper filers.

Due to security concerns, the FCC should adopt a unique identification number and separate password system for all electronically filed applications. In that same vein, NAB opposes allowing public access to applications on the Internet. Electronic access is a separate issue from electronic filing and NAB believes the Commission has not provided any safeguards

against tampering to justify this added “openness” to documents that are already readily available at the station’s public file or at the Commission.

NAB supports the proposal to allow “notification” of *pro forma* transfers of control. However, we offer several suggestions regarding the specific form revisions. NAB is concerned that only providing a “yes/no” option for certifications may be too restrictive in some cases. NAB recommends that a “short response” option be added to allow applicants to attach an additional document. Additionally, the Commission should not eliminate the requirement for the submission of contour maps.

NAB is concerned that the Commission suggests that it may limit construction permit time extensions to “acts of God.” The Commission should adopt a general policy that would allow an extension of time to build if the broadcaster were unable to obtain land use clearance from local authorities.

NAB believes the current Commission enforcement procedures should be adequate to deal with any problems resulting from a streamlined process. NAB supports the use of a formal random audit system to ensure compliance with the certifications as long as the system has ample safeguards for broadcasters to respond to adverse findings.

NAB supports the proposed reduction in required filing frequency for the annual ownership reports. The Commission already requests that stations submit a supplemental ownership report when a change in ownership is approved. This practice will provide the current information if a transfer has occurred.

As a final note, NAB urges the Commission to hold a special public forum so that regulators, licensees, attorneys, consulting engineers and others can engage in an open exchange of ideas. The public forum could help smooth the way for any streamlining proposals.

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**COMMENTS OF  
THE NATIONAL ASSOCIATION OF BROADCASTERS**

**I. INTRODUCTION AND SUMMARY**

In these comments the National Association of Broadcasters ("NAB")<sup>1</sup> submits its initial comments in response to the Commission's *Notice of Proposed Rule Making* ("*Notice*")<sup>2</sup> in the above-captioned proceeding. Here we support FCC proposals that responsibly will reduce procedural and substantive burdens on both broadcasters and the Commission itself. Similarly, we voice favor for these and other reforms that will be faithful to the FCC's statutory mandates and will not threaten the integrity and reliability of the Commission's processes. We also submit these comments in the context of the Commission's recently adopted *Notice of Proposed Rule Making* on "technical streamlining."<sup>3</sup>

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<sup>1</sup> NAB is a non-profit, trade association that represents the interests of radio and television stations and the major television networks.

<sup>2</sup> *Notice of Proposed Rule Making* in MM Docket No. 98-43, \_\_\_ FCC Rcd \_\_\_ (1998).

<sup>3</sup> *Notice of Proposed Rule Making* in MM Docket No. 98-93, \_\_\_ FCC Rcd \_\_\_ (1998) [*hereinafter Technical Streamlining Notice*]. This technical streamlining proceeding is reminiscent of the last decade's infamous "Docket 80-90" proceeding in that the Commission there proposes, among other things, "intermediate classes" of FM channels and expanded use of inefficient, Class D low power FM station operations. Moreover, were there less technical information coming to the Commission on proposed, pared-back application forms as a result of the instant proceeding, we are concerned that there may be increased interference among stations and a general diminution of the band's technical integrity.

We agree with the proposal in the instant *Notice* to expand the interval between the filing of ownership information (via a revised FCC Form 323 or a letter indicating that the FCC Form 323 already on file at the FCC is accurate) from one to four years. NAB also supports the Commission's plan for "notification" of *pro forma* transfers of control.

We further agree with the Commission's proposal to extend the construction permit period for a broadcast station. NAB shares the Commission's desire that stations build FCC authorized facilities within a reasonable time period. In some cases, however, delays in building a broadcast facility are due to local factors that clearly are beyond the control of the permit holder and should not, by themselves, be allowed to create the "lapse" of a construction permit. Local zoning approval, as discussed below, is one such factor.<sup>4</sup>

As a key part of its application streamlining proposals – and tied directly to the plan for electronic filing – the FCC proposes to expand the use of broadcaster "certifications," as opposed to the current system which generally requires substantiation of compliance with various Commission rules and policies. Such a shift, we believe, may in some cases place broadcast applicants in "misrepresentation peril" and in other cases may jeopardize the fundamental FCC task of assuring interference-free service.

Turning to the use of contemporary computer technology to aid the Commission's processes, NAB supports the general concept of electronic filing of the forms and reports designated in the *Notice* – provided that the Commission's broadcast electronic filing rules and policies recognize and provide relief for those small broadcast stations that may not have

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<sup>4</sup> Indeed, and contrary to the proposal of the Commission in the *Notice* to have an inflexible three-year deadline apply to situations where the delay is caused at least in significant part to the local zoning/permitting process, this would embolden local authorities to simply "wait out" the three-year period in order to achieve their victory against a broadcaster. In this regard we urge the Commission to review the record developed in MM Docket No. 97-182, as discussed further below.

the computer resources necessary for such a task. Allowing stations additional time to obtain these resources and/or granting them a "diskette filing" option clearly would be justified and equitable. Moreover, the Commission should not adopt any near-term "drop dead" date for mandatory electronic filing of mass media forms or reports.

However, and with a view toward the principle of security, we urge the Commission to rethink its proposals for electronic *access* to (as opposed to electronic *filing* of) broadcast-related forms and reports. In light of: (1) the problems that have arisen during the course of the Commission's other forays into electronic application filing and retrieval; and (2) other problems that can be foreseen – NAB does not believe the FCC has advanced a plan that meets these concerns.

On the matter of "incentives" for broadcasters to employ electronic filing, we note that the Commission has proposed to charge higher fees to those who continue to submit forms/reports on paper. NAB believes that the Commission, instead, should *reduce* application fees, in light of the reduced FCC staff burden of processing not only electronic forms but forms that contain less information for FCC evaluation. Thus, we urge the FCC to work with Congress in revising application processing fees that better match fee amounts with the agency's costs of "streamlined" processing.

## **II. ELECTRONIC FILING AND ELECTRONIC ACCESS TO BROADCASTER-FILED APPLICATIONS AND REPORTS**

### **A. Electronic Filing**

One of the main issues raised in the *Notice* centers on the Mass Media Bureau's effort to facilitate electronic filing of applications. While NAB agrees that widespread use of electronic filing systems would provide greater efficiencies within the FCC, any adopted system – particularly any "mandatory" system – must take into consideration the wide variety

of applicants and their differing technical and financial capabilities. NAB believes that if the Commission is to implement a mandatory electronic filing requirement for any applications or forms, it must take the following recommendations into consideration.

**1. All applicants should be given the choice of filing over the Internet or on diskette.**

Although Internet accessibility is growing to widespread proportions, there still may be many broadcasters and applicants who would not have the ability or the funds to provide for Internet access to file their applications electronically. However, chances are greater that applicants at least have access to a computer.

In its *Notice*, the Commission does not discuss the option of filing forms electronically on diskette. NAB believes that providing this option will reduce the burdens on those broadcasters who do not have access to the Internet, but may have access to a computer. Additionally, this option will be helpful in situations where network systems may not be compatible with the FCC's electronic system.

Again, this is not just an issue of aiding small stations with no Internet access. It also is relevant to large broadcast companies with complex firewalls between company Local Area Networks ("LANs") and web servers – which prohibit various transmissions from passing through and/or corrupt them enroute. We also note that some FCC software (such as the most recent version of the agency's "feefiler") are identified as not for use on networked computers.

By adopting a "diskette option," the FCC still would achieve its efficiencies because the applications would still be in "electronic" form and easily merged into the Commission's databases.<sup>5</sup> We urge the adoption of such an option.

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<sup>5</sup> The FCC currently allows broadcasters to file Form 398 on diskette or over the Internet.

**2. The Commission should phase-in any mandatory electronic filing.**

The Commission must phase-in any electronic filing requirements. These are relatively “new” technologies. While NAB recognizes the fact that in order for a system to be a success, it must be employed by a majority of users, the Commission must proceed with caution so as not to disrupt completely the application process itself. With some of the new and traditional wireless services – and the tens of thousands of applications filed each year in these services – the demands of application flow required streamlined, electronic filing. However, over-the-air broadcasting is an established service with a lesser, finite number of licensees and potential applicants. Thus, there are no critical demands for a prompt switch to electronic filing. For initial construction permits, this is particularly true since in the auction proceeding, the FCC contemplates adopting a drastically simplified application.

The Mass Media Bureau has had limited exposure to an electronic system such as the one proposed.<sup>6</sup> Broadcasters have had even less exposure. Mandating electronic filing for all applications without any phase-in is a recipe for disaster. There must be an adequate time period to allow for both the Bureau and broadcasters to work out any problems within the system, the forms and the new process. Broadcasters must be given the opportunity to make sure that any electronic system is compatible with their own computer or network. The Commission should not impose a near-term deadline for any mandatory electronic filing requirement. This process should be given enough leeway to provide for as smooth a transition as possible. NAB suggests that the Commission phase-in any mandatory electronic filing over a period of three years. The Commission also could institute the phase-in period

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<sup>6</sup> The Mass Media Bureau’s only foray into the electronic filing world has been the Children’s Television Report filing requirements. Broadcaster conversion to this electronic filing venture has been slow. One reason could be attributed to the technical problems surrounding the system.

by requiring electronic filing on a form-by-form basis. This would give both the Commission and broadcasters time to adjust to the new system of filing applications.

As an incentive for broadcasters to use the electronic filing system during a phase-in period, the Commission should seek approval from Congress to offer discounts on application fees to those who file electronically during a phase-in period. This incentive differs from the suggestion in the *Notice* that would penalize broadcasters that file on paper with higher application fees.<sup>7</sup> Additionally, as discussed below, the applicable fees should also be re-evaluated if the Commission adopts any streamlining of its processes.

**3. The Commission should allow a limited exemption from mandatory electronic filing.**

The Commission should allow for an exemption from any electronic filing for stations that certify they do not have a computer or the ability to pay for any service to allow them to file either on a diskette or over the Internet. NAB has conducted informal surveys of our convention attendees regarding their computer and/or Internet usage.<sup>8</sup> Although the responses may indicate that in many instance stations do have computers and/or Internet access, the surveys do not account for the entire broadcasting industry. The smaller, rural stations that would most likely not have the ability to file applications electronically may not be adequately represented in the pool of informal responses. The Commission cannot institute a mandatory system without providing for some relief for those who would not be able to afford the hardware or to pay someone to electronically file an application.

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<sup>7</sup>*Notice, supra* note 2, at 5, ¶ 11.

<sup>8</sup> NAB's survey of 1997 Radio Show attendees reported that 87% have web access and 56% use the Internet daily. However, 17% of small market radio attendees reported that they did not have Internet access.

**4. The Commission should seek re-evaluation of the applicable application fees.**

In addition to seeking approval from Congress to allow discounts for electronic filers if a phase-in period is established, the FCC should also seek to reduce application fees in general if the streamlining proposals are adopted and fully implemented. The Commission has stated that it expects to realize efficiencies if it adopts the electronic filing proposal<sup>9</sup> and employs pared-back reporting forms and applications. If the Commission requires electronic filing and trimmed-down application and reporting forms, it will save valuable Commission resources; most likely in the form of the number of personnel needed to process applications. Congress, in amending the Section 8 application fee schedule in 1989,<sup>10</sup> stated that the fees were based on the Commission's estimates of the cost of regulation.<sup>11</sup> Ultimately, the proposals in the *Notice*, if adopted, will result in significant savings to the Commission. NAB requests that the FCC ask for Congressional re-evaluation of the application fees if the FCC decides to require electronic filing due to the fact it will cost less for the Commission to process and regulate the application process.

On a related note, the *Notice* fails to address the additional issue of how the Commission expects applicants to pay for application fees. Again, the Commission should provide a choice to all applicants on what method he or she chooses to use to pay the fees. The Commission should not require that fees be paid electronically, even if the application

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<sup>9</sup> *Notice, supra* note 2, at 3, ¶ 7. "Electronic filing could, among other things, speed the processing of applications, save Commission resources, and make filing easier for regulatees ...."

<sup>10</sup> Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, 103 Stat. 2106, 2124 (1989).

<sup>11</sup> See House Report No. 247, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess., September 20, 1989, at 588.

may be filed through an electronic means. Any move to mandated, electronic fee filing for broadcasters also must be governed by a phase-in schedule.

**5. Applicants should be identified through a unique number that is generated at the time of filing.**

In the event that electronic filing becomes reality, the Commission proposes to use Taxpayer Identification Numbers (TINs) to identify applicants.<sup>12</sup> Although the Commission may be required to obtain the TINs of its regulatees,<sup>13</sup> NAB believes that the Commission should not rely on TINs as the sole identification number for an application. TINs in many instances are not confidential; thus using a TIN as the only identifying number would not provide any assurance to the applicant that his or her application will not be the victim of tampering. Although the FCC would take steps to prevent any misuse of TINs,<sup>14</sup> NAB believes that a unique system-generated identifier should be used to identify individual applications.

These unique numbers may also be used as application file numbers that always would attach to the application, regardless of whether the applicant is the subject of an acquisition, merger or other ownership change. Moreover, unique passwords should also be installed as an additional safeguard that would only allow access to the application for authorized individuals. Such access by the applicant also could help facilitate application amendments – access that would not be available to those who might choose to alter an application to make it, for example, not acceptable under FCC rules.

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<sup>12</sup> *Notice, supra* note 2, at 6, ¶ 14.

<sup>13</sup> *Id.* at 5, ¶ 12.

<sup>14</sup> *Id.* at 6, ¶ 14.

The Commission must also provide a system that informs the applicant that his or her application has been received and accepted by the FCC. This will ensure that the applicant has a record of the time and date of receipt. One approach would be for the applicant to receive a prompt e-mail response from the Commission. This response would confirm filing and also assign the application with a unique identifier. If an individual files by diskette, the Commission would send a confirmation letter with the identification number of the application.

**B. Electronic Access**

A broadcaster filing an application or report needs to be assured that the electronic system used for such relay can be relied upon to convey that document quickly and without corrupting or otherwise altering its content. For broadcasters, a good working relationship with the FCC – in terms of the filing and processing of applications and reports – is critically important. Any system of electronic filing must be proven to achieve the high degree of reliability and security that is essential to maintaining that relationship. But, these considerations over security and reliability for electronic filing are overshadowed by concerns over security and access to documents that successfully have been filed electronically.

The Commission states its tentative view that if it mandates electronic filing, it would then make those electronic applications available to the public over the Internet. NAB opposes allowing broad public access to applications on the Internet. The issue of electronic filing is completely separate from the issue of electronic access to the applications by any person. Although the Internet has proven to be a great tool for the dissemination of information, there are major security risks.

It becomes a large security risk to the integrity of the application process if *any* individual has electronic access to *any* of these important documents at *any* time. If

individuals had access to the applications, then possibly they would be able to alter, modify or obliterate an application. As more people use the Internet, it increases the chances that tampering with FCC-filed documents can occur.<sup>15</sup> There also appears to be evidence that “hackers” themselves are becoming more competent.<sup>16</sup> NAB is concerned that the FCC has not provided any detailed information regarding what security safeguards will be installed if it were to allow access to the electronically-filed applications over the Internet.

As the Commission has noted, these documents are already available to the public in the station’s public file. However, broadcasters, per the FCC’s rules, are provided opportunities to ensure the security of the file when it is the subject of a request for public inspection. For example, the requesting party can be asked to identify himself or herself and the licensee need not allow the requesting party to examine the file with no station personnel present. And these safeguards attach only to “copies” of those applications and reports filed at the Commission. Why should similar safeguards not attach to the applications that *are* filed at the Commission? The risks of tampering clearly outweigh any additional benefit derived from this added “openness.”

### **III. REVISED APPLICATIONS AND REVISED APPLICATION PROCESSES**

#### **A. FCC Form 316 and *Pro Forma* Transfers of Control**

NAB supports the FCC plan to allow broadcasters to submit a notification concerning a *pro forma* transfer of control, where no change of control of the licensee is involved, *after*

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<sup>15</sup> According to a TechWeb News article, a survey of Fortune 1000 companies reported that 82.4 percent have experienced a break-in. See Kelly Jackson Higgins, *Under Attack – What hackers know will harm you. Here’s a manager’s guide to ‘Net Hacking 101*, TechWeb News, March 10, 1997 (<http://www.techweb.com/se/directline.cgi?CWK19970310S0060>).

<sup>16</sup> *Id.* The article expresses the concern that there is a trend developing where the individuals are hacking for industrial espionage, and although the biggest threat comes from inside the organization, more damaging attacks are coming from the outside.

the *pro forma* transfer is consummated. It is our view that such a change would provide needed relief for both broadcasters and the FCC.

Moreover, we do not believe such an alteration to the Commission's rules and processes would be at odds with at least the spirit of the relevant statutory provisions applying to transfers of control. However, to the extent that the Commission believes that a statutory change is required as a condition precedent to establishing such a notification system, NAB strongly would support such legislative action.

## **B. Other Application Form Revisions**

### **1. Reliance on Certifications and "Yes/No" Responses – General Principles**

In the context of compliance with the radio duopoly rules and in several other regulatory areas addressed in the *Notice*, the Commission proposes the greater use of broadcaster certifications. Although such a move may well reduce the burden on licensees and the Commission, we are concerned that an expanded "certification" system – and the move to more "yes/no" questions – may place stations into unwarranted jeopardy.

It is our view that the proposed questions on revised application forms should be worded in such a way – and broadcasters be given additional responsive options – so that the applicant would not risk an unnecessary and undeserved charge of "lack of candor" or "misrepresentation." Sometimes the facts surrounding the applicant and the nature of the application do not lend themselves to the applicant's simple choice between a "yes" or "no" response on a Commission application form. Also, in some cases all the facts may not yet be known – facts that are needed to make a knowledgeable choice of responses.

We understand that the move to electronic filing would be expedited and operate more smoothly if all questions could be answered with yes/no or numeric values. However, in the

broadcasting arena, such simple responses are not always the ones that provide the agency with answers fully disclosing all relevant facts. As a result, we recommend that the Commission allow broadcasters – on a streamlined form's "yes/no" or other "short response" question – also to check a box calling the Commission's attention to a "see attached" document. This "see attached" document also could be filed electronically and be available instantly to, for example, any Commission staff member reviewing the application or report, and would be used to explain the basis for the applicant's response.

In that same vein we are concerned over the proposed elimination of the requirement for the submission of contour maps – to support an applicant's assertion that the station complies with the local radio ownership duopoly rules<sup>17</sup> – and the substitution of a "certification" requirement. As the Commission is well aware, there are several methods by which a party may predict the location of field strength contours – contours that are key tools in the Commission's current local duopoly rules. To help avoid the possibility that an applicant may be charged with misrepresentation in a statement that the grant of the application will comply with the duopoly rules, we believe that such maps should be submitted with the application. But, here again, the maps could be submitted in electronic form and be available to Commission staff and others with an interest in the matter.

Moreover, NAB strongly opposes reliance upon mere certifications in areas involving potential new interference to broadcast service. NAB, therefore, anticipates raising these interference concerns in our comments in the "technical streamlining" proceeding initiated by the Commission last week.<sup>18</sup> The combination of reduced technical information available to

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<sup>17</sup> See 47 C.F.R. § 73.3555 (1997).

<sup>18</sup> *Technical Streamlining Notice*, *supra* note 3.

the Commission on application forms and the revised technical rules contemplated in the technical streamlining proceeding pose serious risks to interference free service.

For the Commission to remain faithful to its core role as spectrum "traffic cop," it must have the tools and information necessary for it to fulfill that function. Thus, we do not wish to see the Commission, in this "non-technical" streamlining proceeding, set up an application and/or filing framework that would result in the Commission having less than the baseline information it needs to ensure the technical integrity of the broadcast services.

## **2. FCC Form 301**

Below are several suggestion for altering the proposed FCC revisions to FCC Form 301, the form used for initial construction permits and changes in existing facilities. These are largely technically oriented suggestions.

In the AM Broadcast Engineering Data section, item number 16 includes a statement regarding blanketing interference. The section of the rules referred to in this item should be 47 C.F.R. § 73.88. Also, it would be more appropriate if the sentence were to read, "The proposed facility *will comply* with the requirements of 47 C.F.R. § 73.88." This change is necessary because, at the time the application is prepared, the proposed facility does not yet exist.

Also in the AM Engineering Data section, for item 4, there are some nondirectional stations which operate with "controlled RMS" either day or night (or critical hours), so the estimated efficiency differs day/night/critical hours but yet there is room for only a single efficiency response. Question 5 does not appear to accommodate daytime stations with different critical hour parameters. In item 9, tower orientation is listed twice and spacing not at all. Spacing should be added here. Also, there is no way to accommodate different

electrical parameters (e.g. field and phase) for the same tower that is used under different day and night (or critical hour) operating conditions.

The FM Broadcast Engineering Data section does not include any statement regarding blanketing interference like the one included in the AM section. It would seem appropriate to include a statement in the FM section that says, "The proposed facility will comply with the requirements of 47 C.F.R. § 73.318" as well.

In the FM Broadcast Engineering Data section, and the TV Broadcast Engineering Data section, the statement regarding cross-modulation is over burdensome on the applicant and may go beyond what is required in the current rules. To understand why this is so, consider an example where multiple FM broadcast facilities are located in close proximity to one another. It is possible that, together, these facilities produce an intermodulation product that affects certain non-broadcast receivers. However, if the FM broadcasters in this example have been operating at the site for many years, and some affected receiver equipment was introduced to the area long after all of the broadcasters had commenced operations, then all of the broadcasters would be prohibited from making even minor changes to their facilities unless they agree to fix all of the intermodulation problems that had been created when the other, non-broadcast system began operating. This is an unfair and unreasonable requirement. It would be more appropriate for the statement regarding cross-modulation to mirror the requirements regarding blanketing interference in 47 C.F.R. § 73.318(c). Specifically, broadcasters should only be required to correct *new* complaints of cross-modulation interference for a period of one year after commencing operations with their new facilities.

We note that in its new form the Commission has eliminated the item that requests terrain and coverage data used to calculate height above average terrain (HAAT) in the FM

Broadcast Engineering Data section. We believe that this same item can be eliminated from the TV and DTV sections as well.

In the TV Broadcast Engineering Data section item number 24 is redundant because it requests the same tower registration information as item 5 in the same section (except that item 24 does not actually request the tower registration number). In this case, item 24 should be removed. The same is true in the DTV Broadcast Engineering Data section where items 5 and 9 are redundant. Item 5 should be removed in this case.

The "Environmental Protection Act" items in the radio sections (item 17) differ from those in the TV sections (item 25). We believe that it would be less confusing to applicants, particularly those who submit both radio and TV applications, if these differences did not exist. We suggest that the "Environmental Protection Act" items in all four sections read as follows:

**Environmental Protection Act.** The proposed facility is excluded from environmental processing under 47 C.F.R. Section 1.1306 (*i.e.*, the facility will not have a significant environmental impact and complies with the maximum permissible radio frequency exposure limits for controlled and uncontrolled environments). Unless the applicant can determine compliance through the use of the RF worksheets in Appendix A, an exhibit is required.

By checking "yes" above, the applicant also certifies that it, in coordination with other users of the site, will reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radio frequency exposure in excess of the FCC guidelines.

In the DTV Broadcast Engineering Data Section there should be an item that allows applicants to indicate that an engineering statement showing compliance with Section 73.622(f)(4) is attached, for cases where the effective radiated power (ERP) is more than the assigned ERP.

Along the lines discussed above concerning "certifications," we believe the Commission would be well advised to require an "engineering certification" signed by a

person with the knowledge necessary to make such a certification. In many cases, broadcasters filing (and signing) applications and reports have very little first-hand knowledge of technical matters. To help avoid "misrepresentation jeopardy" where a non-engineer applicant signs a form or report, we believe that an engineering certification also should be required – a certification that would be signed by a station officer, employee, contract employee or consulting engineer with the requisite expertise to make such a certification knowledgeably.

We also believe the Commission should continue to require that applicants for new or modified facilities include a "sketch" of the proposed facility. This sketch need not be expensive to prepare, and it can be submitted electronically. However, it will give the Commission's staff and other interested parties a useful representation of what the proposed facilities will look like.

In this regard we point to the Commission's request that broadcasters file copies of their FCC Form 301 with local zoning/permitting authorities when it is filed by the FCC.<sup>19</sup> On several occasions, representatives of local municipalities have expressed a desire to be presented with a graphic representation of what a proposed facility would look like.

Broadcasters support the notion of conveying a copy of FCC Form 301 to the relevant local authorities. It is our view that the information contained in the FCC Form 301, even if amended generally along the lines suggested by the Commission, would provide local authorities with all relevant information concerning the applicant's plan. If the FCC were to discontinue its requirement that a "sketch" be included in the FCC Form 301 – a sketch which electronically could be conveyed to the Commission as part of the application – we believe

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<sup>19</sup>See FCC News Release, "Commission Creates DTV Tower Strike Force to Target Potential Problems in Implementing Digital Television," released May 29, 1998.

that broadcasters may be forced to develop and present even a more elaborate representation to local authorities.

### **3. FCC Forms 314 and 315**

Concerning FCC Forms 314 and 315, used to govern the transfer of control and assignment of licenses processes, NAB intends to review the initial comments filed in this proceeding and then submit its own views on which reforms would best serve NAB's members. At the outset, however, we believe that the basic principles advanced in our own comments – such as the concern over "yes/no" responses and expanded use of certifications – apply equally to these application forms.

#### **C. Construction Permit Transfers and Time Extensions**

In the *Notice* the Commission proposes to remove the payment restriction on the sale of "unbuilt" construction permits. There are several considerations at issue here. While the removal of such payment restrictions may well serve to expedite and better the inauguration of service by such facilities, this may also result in excessive levels of CP "trafficking" by applicants who may well not ever have intended to build or operate the station. Here too NAB will be reviewing the comments of broadcasters and other parties.

The Commission also proposes to place a strict "lifespan limit" of three years on *any* construction permit – be it for a new station or a modified facility. Under the Commission's proposals an expired CP would be forfeited automatically. The only factors that the Commission says might merit future construction permit time extensions are "acts of God." Moreover, the FCC opines that zoning and other land use disputes may be resolved favorably within a three-year period if the broadcaster applicant pursues the matter diligently. NAB has great concern over each of these statements.

First, as the record in MM Docket No. 97-182<sup>20</sup> depicts thoroughly, it often takes well more than three years for a broadcaster to pursue – successfully and in many cases unsuccessfully – a zoning/permitting request. Indeed, these difficulties in obtaining local approval have spurred the Commission to establish a "strike force" to address these tower siting issues, at least in the context of the transition to digital television. Thus, there is every reason to believe that the Commission's optimism in the *Notice* is not well founded. As such, we believe that continued inability to obtain land use clearance should still be considered as a valid basis for a construction permit extension.

Beyond the issue of land use approval, we believe the Commission should adopt a general policy of granting exceptions that will tighten up on the past practice of routine extension grants but not take the draconian form advanced in the *Notice*. For most broadcasters and broadcast applicants, the filing of a CP request is not a frivolous act. It goes to the heart of the broadcaster's business plan. His or her efforts and expense should not be disregarded through a "three years or you're dead" policy.

#### **IV. ENFORCEMENT**

The proposed streamlining would greatly reduce the burdens on the FCC in terms of the information that would be filed at the Commission. However, as the Commission noted, the proposed revisions may require increased reliance on the certifications made by broadcasters.<sup>21</sup> The Commission already relies on broadcasters to be self-policing in many areas. This does not change even if the Commission should choose to "streamline" more of its processes and applications. Prior to any enforcement action, the Commission must ensure

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<sup>20</sup> *Notice of Proposed Rule Making* in MM Docket No. 97-182, \_\_\_ FCC Rcd \_\_\_ (1997).

<sup>21</sup> *Notice, supra* note 2, at 18, ¶ 47.

that all form instructions and worksheets are comprehensive and understandable.

Broadcasters must have detailed information to properly certify to the questions posed on the revised applications. Unfortunately, the Commission has not released all of the proposed worksheets or form instructions with the *Notice*.<sup>22</sup> Simplifying procedures does not necessarily ensure that the new system will be easily understandable to the broadcasting industry.

One effective way of ensuring compliance would be a formal audit system. However, broadcasters should have sufficient notice of any system. Any formal audit procedure should have ample safeguards that provide broadcasters with the opportunity to respond to any finding that may reflect adversely on the broadcaster. NAB believes the current enforcement measures used for rule violations are adequate even after streamlining.<sup>23</sup> However, the Commission must keep in mind that the proposed streamlining is vast in its scope and may be more complicated than imagined for both broadcasters and the Commission. While the Commission should not let down its guard when it comes to enforcement, it must also realize the magnitude and the effect of the streamlining on the industry.

Any formal audit system should allow for a formal response from the licensee if the Commission should find a discrepancy. Once the FCC randomly chooses a station for an audit, the system should simply consist of a formal written request for any supporting

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<sup>22</sup> NAB is concerned that the Commission will rely on broadcaster certifications that are dependent on yet unreleased worksheets. NAB reminds the Commission that any substantive FCC policy changes that may be reflected in a worksheet must be given the proper notice and comment period required by the Administrative Procedure Act.

<sup>23</sup> The Commission noted that enforcement measures range from admonitions to forfeitures to conducting hearings to determine whether to revoke or deny renewal of license. *See Notice, supra* note 2, at 18, ¶ 48. These measures should be adequate to deal with the situations that may arise during a formal audit by the Commission.

documents or worksheets used by the station in filing a specific application. If further enforcement procedures are necessary after review of the requested documents, the Commission should take such action.

## V. OWNERSHIP REPORTING

As part of the Mass Media Bureau's Biennial Review public forum, NAB suggested that the Commission reduce the required filing for the annual ownership reports.<sup>24</sup> We support the FCC's proposal to reduce the filing requirements for Form 323 to license renewal and at the mid-point of the license term and when control of the station changes.

Requiring broadcast stations to file an annual report, or more likely, a letter certifying the form on file with the FCC is current, is an unnecessary regulatory burden. As stated in the *Notice*, the FCC currently requests that a station file a report after the Commission has approved an assignment or transfer.<sup>25</sup> This practice would continue to provide the FCC, and other interested parties, with the current information regarding the ownership status of a station if a transfer has occurred. Indeed, we believe the FCC must take on the burden of developing and updating a database (founded on information coming from the processing of new station and transfer applications) to reflect the status of broadcast ownership. The database could include information concerning inter-station relationships, attributable ownership, etc. The changes in ownership that are reported in the annual report are thus entirely de minimis.

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<sup>24</sup> See FCC Public Notice, "Office of General Counsel and Mass Media Bureau to Hold Public Forum to Discuss Biennial Review of Mass Media Bureau Rules," released December 23, 1997. See also NAB letter to Roy J. Stewart, Chief of the Mass Media Bureau and David H. Solomon, Deputy General Counsel, *Re: January 13, 1998, Mass Media Bureau and Office of General Counsel Biennial Review Forum*, dated January 20, 1998.

<sup>25</sup> *Notice*, *supra* note 2, at 29, ¶ 83.

Thus, there does not appear to be an overwhelming need to have a station file this information every year when it will have already filed a “supplemental” form every time the FCC authorizes a transfer of control. Expanding the required filing interval to a mid-point in the license term and at license renewal will ensure that material ownership information is on file with the FCC.

**VI. THE COMMISSION SHOULD HOLD A SPECIAL, PUBLIC FORUM ON ITS STREAMLINING PROPOSALS BEFORE IMPLEMENTING ELECTRONIC FILING AND/OR REVISED FORMS, REPORTS AND PROCEDURES.**

Because the regulatory reforms proposed in the instant proceeding are so significant and sweeping – and because they relate as well to the recently inaugurated proceeding on “technical streamlining” – we believe the Commission should take special steps to ensure that any rules changes are justified and make sense. NAB urges the Commission to hold a special, half-day open meeting at which regulators, licensees, attorneys, consulting engineers and others could engage in an open exchange on these and perhaps related matters. In this fashion the FCC would go the necessary “extra mile” before making any of a series of fundamental departures from the way it and its regulatees deal with each other.

**VII. CONCLUSION**

For the reasons stated above, NAB urges the Commission to move cautiously in the move to electronic filing and revised application and reporting forms. There clearly are ways that broadcasters and the Commission may benefit from contemporary technology and a downward revision of government paperwork burdens. However, and particularly where issues of interference-free service are involved, the Commission must ensure that any reforms