

JUL 16 1998

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

**Federal Communications Commission
Office of Secretary**

In the Matter of)
)
1998 Biennial Regulatory Review) MM Docket No. 98-43
Streamlining of Mass Media)
Applications, Rules, and Processes)

REPLY COMMENTS OF BERRY BEST SERVICES, LTD.

Berry Best Services, Ltd. ("BBS") submits these Reply Comments in the above-captioned proceeding. These comments are again limited to the sections of the Notice of Proposed Rulemaking dealing with *"Requirement to Submit Contracts with Assignment and Transfer Applications"* and *Streamlined Ownership Reporting Requirements.*

Requirement to Submit Contracts with Assignment and Transfer Applications.

BBS notes that the majority of commentors, for a wide variety of sensible reasons, agree that sales agreements should be submitted with Forms 314 and 315. CBS Corporation agreed with the FCC's proposal to eliminate this requirement but did not elaborate beyond its stated agreement. The National Association of Broadcasters ("NAB") reserved its comments until it could review the comments filed last month. The Federal Communications Bar Association ("FCBA"), while agreeing that the Commission's proposal to place *"this vital information instead into a station's or applicant's local public inspection file rather than in Washington, D.C."* would hinder or curtail the *"vital role of oversight played by licensee, the public and their lawyers,"* has proposed an alternative to the present policy of inclusion of unredacted sales agreements with Forms 314 and 315 that is costly, unreasonable and unmanageable and unnecessary. The FCBA suggests that the Commission *"should establish in its electronic filing*

procedures that a copy of all supplementary material to an application, including the sales agreement and all worksheets as signed by the applicant, be filed with an independent contractor in Washington, D.C., whose fees shall be paid by the public seeking to obtain copies of such filings."

BBS would like to address this FCBA proposal. Our claim that this proposal would be costly, unreasonable, unmanageable and unnecessary is just that. Sales agreements are currently filed with Forms 314 and 315. As well they should be, since the public has the right to know the value of what is commonly referred to as public property. They have been a part of the application and singularly available in the Commission's public reference room for decades. Whether a researcher, paralegal, lawyer or licensee reviews every or only one sales agreement, having that agreement, or agreements as the case may be, in a separate location would pose an undue cost of time and money on the reviewing party. Imagine certain information in an application at the Commission's public reference room and the rest of it is, say, across town or across the Potomac River. The FCBA further states that the proposed contractor make *"available to the public such filings at the Commission for a fee similar to the per copy charge now charged by such contractor for making available copies of Commission documents from the Commission's public reference rooms."* We have already assumed that the information will be at another site and pointed out the unwieldiness and cost of obtaining it. But when the FCBA suggests *"at the Commission,"* this creates a new scenario. Would this mean that the contractor would accept an order for the information, retrieve it offsite and make it available *"at the Commission?"* And in what time frame? If the contractor's site was not near the FCC, then this could mean extra hours or even a day before the information was

available. Or, does the phrase "*at the Commission*" infer that the Commission will provide storage space for the contractor at taxpayers' expense? If the answer to this last question is "yes" then there is absolutely no saving of Commission resources.

Let us assume, then, that an independent contractor would maintain the documents at a separate location. Assuming also that the fees charged for provision of these documents would be similar to those now charged by such contractors, as the FCBA supposes, then licensees, the public and lawyers could expect to pay research fees, document retrieval and replacement fees, speed of service fees and per page fees for each document made available. Currently, only per page fees are paid. Media commentators to this proceeding have submitted that they currently efficiently disseminate this information from all Form 314 and 315 applications. Such likely expected fees would surely make them reconsider that practice, thus effectively stifling their disclosure of this important information to the public and broadcasting industry.

This costly scenario becomes more intriguing when the Commission moves to the Portals. An independent contractor would surely not expect to store this information in a location near the Portals, where the current rate for leasing space is in the \$40.00/foot range. At that rate for paper storage, the service fees charged would have to be even higher than current normal fees. The FCBA is surely aware that the best locations for storing documents are in lower rent districts. But these locations are usually farther away from downtown or the Portals, making time a costly expense to be born by the researcher, paralegal or lawyer.

Who retains possession of these documents? Let's assume an independent contractor has the FCC contract to provide this service from the beginning of 1999

through 2000. Another party then wins the contract commencing in 2001. Does the original contractor keep the documents submitted to it during its contract period, or is it required to forward them to the new contractor? We think the original contractor keeps the documents submitted during its term. If so, then the burden of locating said documents becomes an eventual labyrinth for licensees, the public and their lawyers.

At the beginning of this argument we noted that the FCBA calls for submission of copies of all supplementary material to an application to a private contractor while the Form 314 or 315 application would be filed electronically. If the FCBA is suggesting electronic submission to a private contractor, it is unnecessary. The Commission should continue to accept the entire application, including all separate documents, electronically. If the FCBA suggests submission of paper copies of these documents, then there is no reason that these documents cannot also be submitted electronically since they are generally originated from the same computer as the Form 314 or 315.

In any case, there is no reason that these documents cannot and should not be submitted with Form 314 and 315. As BBS stated in its original comments and earlier in this reply, the Commission holds that broadcast spectrum is public property. If that is so, then the public has the right to know its value without going to a separate location, paying additional money for that information and experiencing a delay in obtaining all of the information that should be together in the first place.

For all of the above reasons the proposal suggested by the FCBA should be dismissed as costly, unreasonable, unmanageable and unnecessary. As electronic filing is phased in, these documents should be submitted electronically as part of the application.

Until then, they should continue to be submitted and filed on paper as part of the application.

Streamlined Ownership Reporting Requirements.

We note that most commentors support the Commission's proposal to streamline ownership reporting requirements. However, we see no reason why the Commission could not streamline this requirement even further by relaxing the rules to mandate the filing of an ownership report only when a station has been built or sold. If nothing has changed regarding ownership of a broadcast property, there should be no reason to file the same information that is already on file at the Commission.

Summary

The Commission should heed the comments of most commentors and continue to require the filing of the sales agreement with Forms 314 and 315. It should disregard the FCBA proposal to file the sales agreement and other supporting documents with a third party independent contractor as costly, unreasonable, unmanageable and unnecessary.

The Commission's proposal to streamline its ownership reporting requirements should be further streamlined to mandate filing only when a station has been built or sold.

Respectfully submitted,

BERRY BEST SERVICES, LTD.

By: 

Thomas L. Berry, President
Berry Best Services, Ltd.
1990 M Street, NW Suite 740
Washington, DC 20036
202-293-4964