

RECEIVED

AUG 2 9 1998

FCC MAIL ROOM

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

In the Matter of)
)
Implementation of Section 309(j) of the)
Communications Act - Competitive Bidding)
for Commercial Broadcast and Instructional)
Television Fixed Service Licenses)
)
Reexamination of the Policy Statement)
on Comparative Broadcast Hearings)
)
Proposals to Reform the Commission's)
Comparative Hearing Process to Expedite)
the Resolution of Cases)
)
TO: The Full Commission

MM Docket No. 97-234

GC Docket No. 92-52

GEN Docket No. 90-264

PETITION FOR PARTIAL RECONSIDERATION

David Bennis ("Bennis"), by his attorney, hereby respectfully petitions the Commission to partially reconsider its First Report and Order in this proceeding to the extent that such order contemplates the abandonment of the current procedure for the filing and processing of FM translator applications and purports to adopt a new procedure, predicated upon government specified "filing windows". In support thereof, it is alleged:

1. Bennis has been considering the filing of an application for a new FM translator.

However, he has been precluded from filing such an application, because of the application freeze

imposed by the Commission to conserve spectrum while the Commission changes from a hearing system for the selection of broadcast licensees to an auction based system, as directed by the Balanced Budget Act of 1997. By First Report and Order, released in this proceeding on August 18, 1998, the Commission adopted new rules, implementing procedures for the auctioning of broadcast construction permits and licenses. However, the Commission did not lift the freeze on FM translator applications. Instead, it adopted rules that provided that such applications may only be filed during specified window periods to be established, in the future, by the FCC. In making this change, the Commission commented that it did so, at least in part, because it received very few comments in opposition to the window filing proposal set forth in the Notice of Proposed Rules Making in this proceeding. Report and Order at para. 140.

2. Bennis was unaware that the Commission was anticipating such a drastic change in the procedures applicable to the filing of FM translator applications. Had Bennis been aware that such a drastic change was contemplated, he would certainly have filed comments in opposition to the change.

3. As the Commission must be aware, the filing of mutually exclusive applications for FM translators is a very rare occurrence. Certainly, more than 95% of all such applications are entirely uncontested and are routinely granted. In those rare instances where a conflicting application may be filed, it is commonplace for the mutual exclusivity to be resolved by the applicants, themselves, either by a change of transmitter site or a change in operating frequency. Therefore, the Commission has never been obliged to hold a comparative hearing involving translator applicants.

4. For the same reason, it is extremely unlikely that the Commission will ever hold

an auction to resolve mutual exclusivity between applicants for an FM translator. Therefore, the window filing procedure, which makes sense for FM and TV broadcast applications, really makes no sense at all when applied to translators. It merely inhibits the workings of the free market by confining and limiting entrepreneurs from seeking translator licenses on a free market, demand basis.

5. Recently, to their great credit, the Congress and the FCC have both moved to deregulate the broadcast industry and to make the FCC more responsive to free market conditions. On June 11, 1998, acting in MM Docket No. 98-93, the FCC adopted a Notice of Proposed Rule Making, looking towards a rule which would allow negotiated interference reduction agreements in the FM broadcast service. Heretofore, the location of FM translator sites has been specified by government decree; a site had to be situated in accordance with arbitrary spacings requirements set forth in the Commission's Rules. In its forward thinking action in Docket 98-93, the Commission proposes to change all of that and to allow individual broadcasters to decide whether it is in their interest and the public interest to allow short spacings in order to better serve public needs.

6. Regrettably, the window filing system for FM translators adopted in this proceeding is a step backward. It places a burden on individual entrepreneurs who might wish to establish an FM translator by requiring them to file their applications only at times specified by the FCC. During those specified time periods, the engineering profession will be extremely burdened, trying to meet the deadline. Hence, there exists a greater possibility that there will be a mistake in the application and the fees charged to individual applicants are likely to be greater than with the present system, where an application can be filed at any time when an applicant determines that there is a need for an FM translator. The public will also lose out, because of the loss of flexibility in the ability of individual entrepreneurs to timely satisfy public needs.

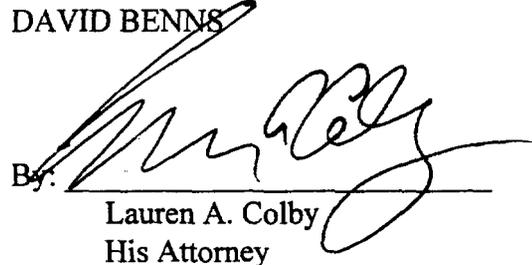
7. For these reasons, Bennis respectfully requests the Commission to partially reconsider its First Report and Order, and to retain the current system for the filing and processing of FM translator applications. Under that system, an application may be filed at any time. After it is filed, the Commission issues a public notice, providing a 30 day time period for the filing of objections or competing applications. Competing applications are practically never filed in the FM translator service. In the unlikely event that there should be competing applications, however, the Commission now has the authority to resolve the mutual exclusivity by simply holding an auction. That is what the Commission should do.

Respectfully submitted,

DAVID BENNIS

August 27, 1998

Law Office of
LAUREN A. COLBY
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113

By: 

Lauren A. Colby
His Attorney