

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

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In the Matter of)	
)	
Implementation of Section 309(j))	MM Docket No. 97-234
of the Communications Act)	
— Competitive Bidding for Commercial)	
Broadcast and Instructional Television)	
Fixed Service Licenses)	
)	
Reexamination of the Policy Statement)	GC Docket No. 92-52
on Comparative Broadcast Hearings)	
)	
Proposals to Reform the Commission's)	GEN Docket No. 90-264
Comparative Hearing Process to)	
Expedite the Resolution of Cases)	
)	

TO: The Full Commission

PETITION FOR RECONSIDERATION

Pursuant to Section 405 of the Communications Act, 47 U.S.C. Section 405, Michael

J. Powell ("Powell"), by his attorney, hereby respectfully requests the Commission to reconsider its First Report and Order in this proceeding, released August 18, 1998, as follows:

1. On August 14, 1997, Powell filed an application with the Commission for a construction permit for a new FM broadcast station at Snow Hill, Maryland. That application was filed pursuant to a window notice released June 27, 1997, and published at 12 FCC Rcd. 8298. Although the application was filed after the effective date of the Balanced Budget Act of 1997, the

application was filed at a time when the Commission's Rules and Regulations still provided that, in the event of the filing of competing applications, a winner would be selected by a comparative hearing. In fact, competing applications were filed for the Snow Hill facility.

2. At paragraph 105 of its First Report and Order, the Commission recognizes that it has an obligation to refund previously paid filing fees if any of the applicants decide not to proceed in the auction. This recognition on the Commission's part no doubt stems from the Supreme Court case of U.S. v Winstar Corporation, 518 U.S. 839 (1996). In that case, the Supreme Court recognized that when the government enters into a contract with a private party, the government may not retroactively repudiate the contract without due compensation to that party. The mere reimbursement of any government fees which may have been paid is wholly insufficient to make the applicant whole; indeed, no sum of money is sufficient to fully compensate an applicant for the loss of its right to a hearing.

3. Powell filed pursuant to an invitation issued under rules which provided for Powell to have a comparative hearing. Powell is now told that he will have no hearing and that the Commission does not intend, apparently, to compensate him for the substantial legal and engineering fees, and other costs incurred by him when he filed his application under rules that provided for a hearing. Powell respectfully represents that the application of the auction rules to his application,

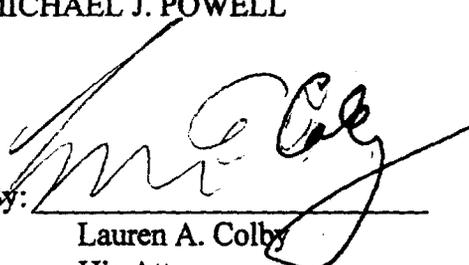
without compensation for the substantial costs which he has incurred in reliance on prior rules, deprives Powell of due process of law in violation of well-established Constitutional principles.

Respectfully submitted,

September 3, 1998

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By: 

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