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

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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)
)

MM Docket No. 97-234

GC Docket No. 92-52

GEN Docket No. 90-264

TO: The Full Commission

PETITION FOR RECONSIDERATION

Pursuant to Section 405 of the Communications Act, 47 U.S.C. Section 405, Island Broadcasting Company, Inc. ("Island Broadcasting"), by its 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, Island Broadcasting filed an application with the Commission for a construction permit for a new FM broadcast station at Chincoteague, Virginia. 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

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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 Chincoteague 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. Island Broadcasting filed pursuant to an invitation issued under rules which provided for Island Broadcasting to have a comparative hearing. Island Broadcasting is now told that it will have no hearing and that the Commission does not intend, apparently, to compensate Island Broadcasting for the substantial legal and engineering fees, and other costs incurred by Island Broadcasting when it filed its application under rules that provided for a hearing. Island Broadcasting respectfully represents that the application of the auction rules to its application, without compensation for the substantial costs which it has incurred in reliance on prior rules,

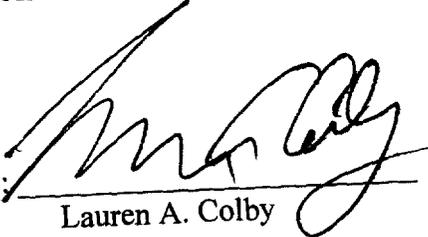
deprives Island Broadcasting of due process of law in violation of well-established Constitutional principles.

Respectfully submitted,

ISLAND BROADCASTING COMPANY, INC.

September 3, 1998

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By: 

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