

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)	MM Docket No. <u>97-234</u>
)	
Reexamination of the Policy Statement on Comparative Broadcast Hearings)	GC Docket No. 92-52
)	
Proposals to Reform the Commission’s Comparative Hearing Process to Expedite the Resolution of Cases)	GEN Docket No. 90-264
)	
TO: The Full Commission)	

PETITION FOR PARTIAL RECONSIDERATION

Pursuant to Section 405 of the Communications Act, 47 U.S.C. Section 405, James W. Lawson (“Lawson”), by his attorney, hereby respectfully requests the full Commission to partially reconsider its First Report and Order, in this proceeding, as follows:¹

1. Lawson is an African-American, who owns two broadcast stations: an AM broadcast station in Tuscaloosa, Alabama, and an FM broadcast station in Eutaw, Alabama. Mr. Lawson is an active broadcaster. He conducts his own talk show everyday. He makes his living from broadcasting. He is not a speculator.

¹The Report was published on September 11, 1998, at 63 FR 48615 (September 11, 1998).

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2. Nevertheless, in an effort to expand his broadcast service, Mr. Lawson filed applications for new FM broadcast stations in Greensboro, Alabama, and State College, Mississippi. Unfortunately, competing applications were filed and, under the rules in effect at the time when those competing applications were filed, Lawson would have been entitled to a hearing to determine whether his applications should be granted, or those of his competitors.²

3. After Lawson's applications were filed, the Congress of the United States passed the Balanced Budget Act of 1997, which purports to change the criteria for selecting broadcast licensees from a hearing system to a government auction system. In the same Balanced Budget Act, the Congress also provided for a 180 days settlement window, which expired in February of 1998. During the settlement window, Lawson made vigorous efforts to settle with his competitors but, alas, those efforts were unsuccessful. The cases did not settle and are now destined to go to government auction.

4. Mr. Lawson has expended large sums of money in the preparation and prosecution of his applications; not as much as would have been expended if the applications would have gone to hearing, but substantial sums, nonetheless, to procure transmitter sites, for legal and engineering expenses, and government filing fees.

5. Lawson respectfully submits that the Commission cannot properly auction the Greensboro and State College channels without first returning to him and the other affected applicants all of the monies which they have expended in reliance upon rules which contemplated that there would be a hearing. To auction these channels without first returning all of the money

²Both of Mr. Lawson's applications were filed prior to July 1, 1997. The Greensboro application was filed on May 14, 1997, and the State College application was filed on November 18, 1996.

would constitute an unconstitutional taking of Lawson's property without due process of law. U.S. v. Winstar Corporation, 518 U.S. 839 (1996).

6. There is, moreover, another matter which Lawson desires to call to the Commission's attention. Section 309(j)(6)(E) of the Communications Act, enacted by the Congress as part of the Balanced Budget Act, reads as follows:

"(6) Rules of Construction. - Nothing in this subsection, or in the use of competitive bidding, shall -

(E) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings;"

In this Section, the Congress made clear its intention that the Commission should not use the auctions as a mere tool to extract money from the broadcasting industry. Instead, it should try wherever possible to avoid conflicts which require an auction.

7. Under the rules adopted in the First Report and Order, the Commission proposes that once bidding forms are filed (FCC Form 175), anti-collusion rules will kick into place which will prevent any further negotiations amongst the applicants. Lawson respectfully submits that this procedure is inconsistent with the provisions of Section 309(j)(6)(E) of the Communications Act.

8. Lawson still believes that the Greensboro and State College cases can be settled and that settlements can be devised which are consistent with the current provisions of the Commission's rules. There should, however, be some opportunity for negotiated settlements, even after the bidding forms are filed. Experience has shown that most cases settle at the eleventh hour on the courthouse steps. Lawson urges the Commission to adopt a procedure for a 60 day settlement

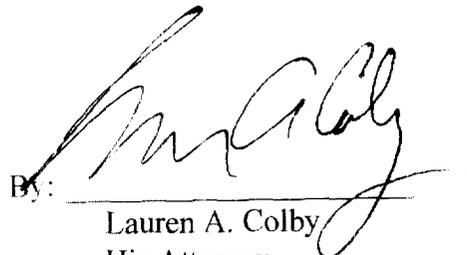
window, after the bidding forms are submitted. Lawson believes that if such a procedure is adopted there is a likelihood that many cases will settle and that the licenses awarded pursuant to such settlements will be awarded to persons including minorities and persons of modest means, who might not be able to afford to purchase licenses in a government auction for cash on the barrelhead, in competition with large companies, who already own hundreds of broadcast licenses. Thus, Lawson's proposal is in the public interest, and will promote the Commission's long cherished policy of encouraging diversity in the ownership of broadcast stations.

Respectfully submitted,

JAMES W. LAWSON

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