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

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20535

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)	GC Docket No. 92-52
Statement on Comparative Broadcast)	
Hearings)	
)	
Proposal to Reform the Commission's)	GEN Docket No. 90-264
Comparative Hearing Process)	
to Expedite the Resolution of Cases)	

To: The Commission - Mail Stop 1170

PETITION FOR RECONSIDERATION

1. The Community Broadcasters Association ("CBA") hereby petitions for reconsideration of two aspects of the *First Report and Order* ("Order"), in the above-captioned proceeding, FCC 98-194, released August 18, 1998, implementing provisions of the Balanced Budget Act of 1997 by adopting general competitive bidding procedures to select among mutually exclusive applications for commercial analog broadcast service licenses. Specifically, CBA requests reconsideration of the attribution of low power television ("LPTV") rules as media interests in determining a bidder's classification as a Designated Entity and consequent

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qualification for bidding credits in any mass media auction.¹ CBA also requests reconsideration of the timing of the anti-collusion rules and when they apply to competitive bidding among applicants for LPTV channels. Attribution of LPTV interests and the current timing of the anti-collusion rule will deter the improvement of LPTV stations, which provide substantial amounts of local and specialized programming not available elsewhere and represent one of the most available entry points into media ownership for the small businesses which the Communications Act and the Designated Entity provisions are intended to assist.²

2. The Communications Act expressly directs the Commission to afford opportunities to participate in provision of spectrum-based services to small businesses and businesses owned by members of minority groups and women. *See Order* at ¶186. The LPTV industry offers a significant business entry opportunity to those groups, more so than any other mass medium, because LPTV stations can be constructed and operated at modest cost; and as a result, the LPTV industry has substantial minority and female representation among its owners. Counting LPTV interests against an auction bidder, and precluding discussions that could lead to engineering settlements after the FCC Form 175 has been filed, will serve to disadvantage the very groups the Commission has been instructed to protect.

3. There are two specific situations where counting LPTV interests in determining the “new entrant” bidding credit would produce undesirable results. The first is where an LPTV

¹ CBA's arguments in this Petition, and the relief CBA seeks, apply equally well to TV and FM translators.

² The Designated Entity provisions are intended to assist minority and female entrepreneurs as well as small businesses generally, without establishing constitutionally forbidden preferences based on race or sex.

operator seeks to upgrade its facility by filing an application for a full power channel. Upgrades should be encouraged by the Commission as a way for entrepreneurs to build on their past work and to improve their service to the public.³ But under the rules as they now stand, the LPTV operator would lose the maximum bidding credit, even if it operated only one LPTV station, because that media interest would be in the same community where the full power application was filed.⁴ That result is directly contrary to the Commission's previous practices and its directions to protect small, minority- and women-owned businesses. LPTV stations are not attributed for purposes of the Commission's multiple ownership rules,⁵ nor are they attributed for any other regulatory purpose, and with good reason, considering their secondary spectrum status and relatively small

³ Upgrades were given a preference in the days of comparative hearings. See *Knoxville Broadcasting Corp.*, 103 FCC 2d 669 (1986) and *Miner v. F.C.C.*, 663 F.2d 152, 48 RR 2d 1069 (DC Cir. 1980). See also, *In re Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments, Second Report and Order*, 101 FCC 2d 638, 57 RR 2d 1607 (1985), where the Commission determined that it was in the public interest to afford some form of special consideration to daytime-only licensees when they applied for FM allotments in their community of license based upon many factors, including that the daytimers were a unique class of broadcast licensees operating under substantial restrictions which included limits on the amount of relief that could be provided due to requirements of other types of stations and so faced substantial difficulties in expanding service to their communities and yet with a significant history of serving their communities. The same is true for LPTV stations which operate under significant technical restrictions and yet also serve their communities notwithstanding such restrictions.

⁴ *Order* at ¶190.

⁵ See §74.782(b). One person or entity may hold licenses for an unlimited number of LPTV stations, including multiple LPTV stations in the same community and one or more LPTV stations in a community where other media interests are held.

coverage areas.⁶ Changing that approach here will have detrimental effects that the Commission should not have intended and should now correct.⁷

4. The second situation where LPTV attribution will be detrimental is the case of mutually exclusive LPTV applicants for the same channel. The Rules as initially adopted provide that an application to upgrade or to modify a station, whether it is filed due to displacement by a digital television (“DTV”) station or for other reasons, will be subject to competitive bidding where two or more LPTV stations attempt to relocate to the same channel or file applications that are otherwise mutually exclusive.⁸ Here, the rules must not be structured so that they disadvantage an incumbent operator seeking to upgrade its facility through a major change. As indicated above, the Commission has historically encouraged facility upgrades, and it should continue to do so here. Thus at a minimum, an LPTV station that is itself the subject of an application in an auction should never be counted as a media interest. If LPTV interests are attributed at all, only ownership of stations that are not part of the auction should be attributed.⁹

⁶ The only place where LPTV interests have been attributed with any real significance is in determining diversity preferences for lotteries among LPTV applicants. See Sec. V of FCC Form 346. The Commission no longer has authority to award licenses by lottery, so that attribution is no longer in effect. LPTV stations have been treated as relatively insignificant in the comparative hearing context. See *Global Information Technologies, Inc.*, 8 FCC Rcd 4024 at 4029 (1993), where the Review Board determined that the weight to be accorded to LPTV ownership interest for diversification purposes was minimal due to the secondary nature of the LPTV service, its inherently limited coverage potential, and its minor significance in the media marketplace.

⁷ If a new “Class A” station class is adopted as requested in CBA’s rule making petition, File No. RM-9260, those interests should also not be attributable when full power applications are filed, again to encourage facilities upgrades.

⁸ *Order* at ¶113.

⁹ CBA does not believe that any LPTV station in the same market as the auction application
(continued...)

5. The broadcast auction rules also disproportionately impact the LPTV industry by adopting collusion rules which make engineering settlements difficult to achieve. *See Order* at ¶155. LPTV applications are filed only during special windows, which to date have been opened for only one week at a time less often than once a year. Because of their infrequency, these windows attract large numbers of applications, and mutual exclusivity is common. Upon the opening of the next filing window, all applicants will be required to file a short-form application (Form 175). After the short-form filing, the anti-collusion rule will bar mutually exclusive applicants from collaborating try to find engineering solutions to rid the applications of the mutual exclusivity.¹⁰ This result is contrary to the Commission' statutory directive "to use engineering solutions . . . and other means" to resolve competing applications. *See Order* at ¶17 and 47 U.S.C. §309(j)(6)(E). To avoid this problem, the anti-collusion rules should not apply to any LPTV applicants until the bidding process commences.¹¹ That change would both comply with

⁹(...continued)

should be attributed for purposes of determining Designated Entity status. It might be desirable to have some attribution of stations in other markets, as a way of encouraging local ownership of LPTV stations. CBA notes that in applying the national household limit in §73.3555(e)(2)(i), the Commission counts households reached by UHF stations as only half compared to households reached by VHF stations. By way of analogy, it might be appropriate to count LPTV stations as 10%, meaning that ownership of ten LPTV stations would be deemed the equivalent of owning one full power station.

¹⁰ The *Order* states: "Consistent with the anti-collusion rule's prohibition of discussions between competing applicants, we also conclude that we will not permit applicants to modify or amend their technical or engineering data submitted with their short-form applications following the short-form filing deadline so as to eliminate mutual exclusivity . . .". *See Order* at ¶156.

¹¹ The *Order* adopts such an opportunity for modification applications. *Order* at ¶17.

the statutory objective and help LPTV applicants afford a bidding process in which many of them do not have the financial resources to participate.

6. Ownership and operation by local citizens is the hallmark of the LPTV industry. It serves an important public interest because local owners commonly provide programming relevant and of interest to local viewers. In an era when unprecedented consolidation of the broadcast industry is occurring, LPTV stands as an important exception. Unnecessary burdens on LPTV operators in the auction process will result in an adverse impact, and in many cases the exclusion from media ownership for small businesses and minority and women-owned companies, with a resulting loss in local and specialized niche services to the public.

7. In order to protect local programming, locally owned and operated stations should really receive a priority over non-locally owned and operated broadcast stations in a competitive bidding situation. And in any case, they should never be burdened with any disadvantage based on their existing local ownership and should not be prevented from crafting any possible solution at any time to avoid the need to divert their limited resources from station operations to competitive bidding.

8. The LPTV industry is one of the last available opportunities for small, local, minority and women-owned broadcasters. The broadcast auction rules must not be allowed to diminish that opportunity; but as adopted, they will do just that. The Commission has been directed by Congress to protect the opportunities of these entities; and to do so, the Commission

should not attribute local LPTV ownership in determining bidding credits and should allow collaboration as long as possible to enable LPTV applicants to find engineering solutions that will obviate the need to competitively bid.

Respectfully submitted,

A handwritten signature in cursive script, reading "Michelle A. McClure", written over a horizontal line.

Peter Tannenwald
Michelle A. McClure

Counsel for Community Broadcasters Association

Irwin, Campbell and Tannenwald, P.C.
1730 Rhode Island Ave., N.W., Suite 200
Washington, D.C. 20036-3101
Tel. 202-728-0400
Fax 202-728-0354

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