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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

In re Applications of	)	MM DOCKET NO. 90-323
	)	
<b>HS COMMUNICATIONS, INC.</b>	)	File No. BPH-880505MZ
	)	
<b>STACY C. BRODY</b>	)	File No. BPH-880505NO
	)	
<b>CRAIG L. SIEBERT</b>	)	File No. BPH-880505PM
	)	
For Construction Permit	)	
Channel 271A	)	
Virginia Beach, Virginia	)	

To: The Commission

**MASS MEDIA BUREAU'S FURTHER COMMENTS ON  
JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENTS  
AND PETITION FOR LEAVE TO AMEND**

1. On May 12, 1998, the Mass Media Bureau ("Bureau") filed comments ("Comments") which supported a joint request for approval of settlement agreements filed February 6, 1998, by HS Communications ("HS"), Stacy C. Brody ("Brody"), and Craig L. Siebert ("Siebert") and supported, in part, a related petition for leave to amend filed February 6, 1998, by Siebert. On June 12, 1998, Siebert filed a reply to comments of Mass Media Bureau ("Reply"). The Bureau submits the following further comments in regard to the petition for leave to amend.

2. As noted in our Comments, the proposed settlement agreements contemplate the grant of Siebert's application and the dismissal of the HS and Brody applications. The Bureau also observed that Siebert's companion petition for leave to amend proposed relocation of his transmitter site and construction of a new tower. The Bureau noted that Siebert sought waivers of Sections 73.213(c)(1) and 73.315(a) but pointed out that the waivers

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would be unnecessary if the applicant reduced power and requested processing in accordance with Section 73.215.

3. In his Reply, Siebert contends that the Bureau's comments "ignores the statutory directive to waive all rules *necessary to achieve settlements*," referring to the *Balanced Budget Act of 1997*, Pub. L. No. 105-33, 111 Stat. 251 (1997) ("*Budget Act*"). Reply at 1, emphasis added. See also, Reply at 5-6. The Bureau disagrees with this interpretation of the Budget Act.

4. The Budget Act requires the Commission to "waive any provisions of its regulations necessary to permit such persons to enter an agreement to procure the removal of a conflict between their applications . . . ." 47 U.S.C. Section 309(I)(3). Neither the consideration of Siebert's proposed amendment nor the grant of the requested waivers is *necessary* for achieving the full market settlement desired by the applicants to this proceeding. The Bureau notes that neither the joint request nor any of the settlement agreements address Siebert's proposed amendment. Furthermore, the Siebert application, as originally filed, fully conforms to the Commission's technical rules. This finding was set forth by the presiding Administrative Law Judge, a ruling which no party, including the Bureau, challenged. At no point does Siebert indicate that this original site is no longer available. Thus, should the Commission choose to dismiss Siebert's petition for leave to amend, the Commission can still grant the joint request and Siebert's application.

5. Assuming, *arguendo*, that Siebert no longer has access to his original site, it still does not follow that it is *necessary* for the Commission to waive one or more of its technical rules. As stated previously, the newly-proposed site would be acceptable without waiver of

the Commission's Rules if Siebert proposes a minor reduction in power and invokes the Commission's contour protection processing rule.

6. Accordingly, the Commission can, consistent with Congress' directive, grant the joint request but deny Siebert's requests for waiver and dismiss his petition for leave to amend.<sup>1</sup> Alternatively, the Commission can condition the grant of Siebert's petition for leave to amend as advocated by the Bureau in its May 12, 1998, comments.

Respectfully submitted,  
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Chief, Mass Media Bureau



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June 26, 1998

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<sup>1</sup> Upon grant at the original site, Siebert would be free to file an application for modification of his construction permit requesting facilities at an alternative site, including the site specified in its February 6, 1998, petition for leave to amend.

**CERTIFICATE OF SERVICE**

Talya Lewis of the Complaints and Political Programming Branch, Mass Media Bureau, certifies that she has on this 26th day of June, 1998, sent by first class United States mail, copies of the foregoing "**Mass Media Bureau's Further Comments on Joint Request for Approval of Settlement Agreements and Petition for Leave to Amend**" to:

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