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November 4, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA MESSENGER

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Written Ex Parte Presentation
in MM Docket No. 87-268

Dear Ms. Salas:

We represent Pappas Telecasting of Southern California, L.L.C. ("Pappas Telecasting"). Pappas Telecasting currently holds an outstanding construction permit from the Commission that authorizes Pappas Telecasting to build new analog UHF commercial television broadcasting station KBJO (TV) on NTSC Channel 54 in Avalon, California (File No. BPCT-860210KM, as amended, granted by an action of the Commission's General Counsel, taken pursuant to delegated authority on June 2, 1998).

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An original and one copy of this letter and its enclosure are being submitted herewith in compliance with Section 1.1206(b)(1) of the Commission's Rules in connection with Pappas Telecasting's efforts in the above-referenced rule making proceeding to persuade the Commission to allot a digital television broadcasting ("DTV") station channel -- Channel 29 -- to Avalon, to be "paired" with KBJO (TV)'s NTSC Channel 54. *See generally* Pappas Telecasting, *et al.*'s May 1, 1998 "Petition for Reconsideration of the Commission's Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order" and Pappas Telecasting's July 17, 1998 "Supplement to Petition for Reconsideration of the Commission's Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order" in MM Docket No. 87-268.

Pappas Telecasting has previously noted that it was not initially eligible for a paired DTV channel allotment, since the initial construction permit for KBJO (TV) was not issued until after April 3, 1997. *See generally Fifth Report and Order in MM Docket No. 87-268, Advanced Television Systems and their Impact upon the Existing Television Broadcast Service*, 12 FCC Rcd 12809, 12816-16a, at Paras. 17-18 (1997), *on reconsideration*, 13 FCC Rcd 6860 (1998), *petitions for reconsideration pending* (the "Fifth Report and Order") (Commission decides that Section 336(a)(1) of the Telecommunications Act of 1996 limits the initial eligibility for the issuance of DTV licenses to persons who, on the date of such issuance, were licensed to operate an NTSC television station or held a construction permit for such a station).

However, Pappas Telecasting has previously called the Commission's attention to Footnote 26 of the *Fifth Report and Order*, 12 FCC Rcd at 12816a, in which the Commission stated that "[w]e will give particular consideration for assigning temporary DTV channels to new licensees who applied on or before October 24, 1991, given the reliance that these parties may have placed on rules we adopted before passage of the 1996 Act." *Id.* Pappas Telecasting has pointed out that the application for the construction permit for KBJO (TV), into which Pappas Telecasting amended, was filed prior to October 24, 1991 by the predecessor applicant, Island Broadcasting Limited Partnership.

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Pappas Telecasting also has shared with the Commission on an informal basis the results of Pappas Telecasting's research of the Commission's broadcast applications database, which suggests that there are only three other grantees of construction permits for new NTSC television broadcasting stations whose applications were (i) filed after October 24, 1991, and (ii) granted after April 3, 1997. (The three other grantees' stations are located in Sheridan, Wyoming, Fredericksburg, Texas, and Charlottesville, Virginia, respectively). Thus, there is only a very limited universe of four parties who appear to qualify for the special consideration that is contemplated in Footnote 26 of the *Fifth Report and Order*.

Pappas Telecasting has been asked whether its May 1, 1998 Petition for Reconsideration of the Commission's *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, as supplemented on July 17, 1998, and its advocacy of the allotment of DTV Channel 29 to Avalon, conflicts with any other NTSC or DTV station, any pending application, any NTSC or DTV channel allotment, or any other pending petition for reconsideration of the *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order in MM Docket No. 87-268*, 13 FCC Rcd 6860 (1998), or the *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order in MM Docket No. 87-268*, 13 FCC Rcd 7418 (1998). Pappas Telecasting has also been asked by the Commission's staff in both the Mass Media Bureau ("MMB") and the Office of Engineering and Technology ("OET") to demonstrate the feasibility of the allotment of DTV Channel 29 at the site at which the outstanding construction permit from the Commission authorizes Pappas Telecasting to construct the transmitting facilities of new analog station KBJO (TV) on NTSC Channel 54. In response to those questions, Pappas Telecasting respectfully submits the following:

- Pappas Telecasting consulted with the staff of both MMB and OET who are familiar with the pending petitions for reconsideration of the *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order, supra*, and the *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, supra*.

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The staff directed Pappas Telecasting's undersigned counsel and its engineering consultant to only one such petition for reconsideration that might be germane to the proposed allotment of DTV Channel 29 to Avalon. Attached to this letter is the Engineering Statement of Neil M. Smith, P.E., of the firm of Smith and Fisher in Washington, D.C., Pappas Telecasting's consulting engineer, dated October 29, 1998. Mr. Smith reports that he reviewed the subject petition for reconsideration (which was filed by Channel 51 of San Diego, Inc.) and found that it does not conflict Pappas Telecasting's proposal.

- Mr. Smith's Engineering Statement further demonstrates that DTV Channel 29 may be allocated to Avalon, to be paired and co-located with KBJO (TV)'s analog Channel 54, ". . . with no adverse impact on the Commission's DTV plan."
- Mr. Smith's Engineering Statement points out that while DTV Channel 29 can be allotted to Avalon for use at the site at which the Commission has authorized Pappas Telecasting to build KBJO (TV)'s transmitting facilities on NTSC Channel 54, it is not in fact Pappas Telecasting's intention to co-locate the DTV station's facilities with those of KBJO (TV). As has been previously explained to the Commission's staff in informal meetings in both oral and written *ex parte* presentations, upon the allotment of DTV Channel 29 to Avalon for use at the site of KBJO (TV)'s authorized transmitting facilities, and consistent with the Commission's rules and procedures therefor, Pappas Telecasting will promptly apply to the Commission for an authorization to relocate the DTV station's transmitting facilities from KBJO (TV)'s site to a site on Mount Wilson. Mr. Smith's Engineering Statement concludes that on Mount Wilson, ". . . Channel 29 can be operated within the Commission's DTV guidelines."

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For all of the foregoing reasons, as well as those set forth in Pappas Telecasting's May 1, 1998 Petition for Reconsideration of the *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, and Pappas Telecasting's July 17, 1998 Supplement thereto, and in Pappas Telecasting's prior oral and written *ex parte* presentations to the Commission on this matter, Pappas Telecasting respectfully urges the Commission to grant Pappas Telecasting the relief provided for in Footnote 26 of the *Fifth Report and Order, supra*, and to allot DTV Channel 29 to Avalon.

In the event that the Commission or its staff should have any questions concerning this matter, kindly refer them to Pappas Telecasting's undersigned counsel.

Sincerely yours,



John Griffith Johnson, Jr.
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

Enclosure

cc (with enclosures, all via messenger): Susan Fox
Anita L. Wallgren
Helgi C. Walker
Jane E. Mago
Richard Chesson
Roy J. Stewart
Keith Larson
Gordon W. Godfrey
Bruce A. Franca
R. Allan Stillwell

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of PAPPAS TELECASTING OF SOUTHERN CALIFORNIA, L.L.C., ("Pappas"), permittee of a new analog television station to operate on Channel 54 in Avalon, California. It is the purpose of this statement to provide technical information on the proposed allotment of DTV Channel 29 to Avalon.

Pappas has determined that no other pending petitions in MM Docket No. 87-268 are in conflict with this proposal. The petition most likely to be a problem is that of Channel 51 of San Diego, Inc., which relates to the allotment of DTV Channel 51 to Rancho Palos Verdes, California. That petition does not conflict with this proposal.

It is proposed that DTV Channel 29 be allotted to Avalon, to be paired and colocated with analog Channel 54. Maximum power, at 153° T and 287° T, would be 50 kw, with a directional pattern as tabulated in Figure 1. Allocation studies have been conducted to determine the potential interference that might be caused to other analog and digital allotments. The allotments under consideration were KCET, Los Angeles, NTSC Channel 28, KBAK, Bakersfield, NTSC Channel 29, KPXN, San Bernardino, NTSC Channel 30, and KPBS, San Diego, DTV Channel 30. In each instance the interference-free population is the same, whether or not the proposed allotment is considered. Thus, this allotment can be made with no adverse impact on the Commission's DTV plan.

As the Commission has been informed, Pappas ultimately intends to apply to operate

SMITH AND FISHER

this DTV facility at Mount Wilson, where Channel 29 can be operated within the Commission's DTV guidelines.

I declare under penalty of perjury that the foregoing statements and the attached exhibit are true and correct to the best of my knowledge and belief.



NEIL M. SMITH

October 29, 1998

HORIZONTAL RELATIVE FIELD PATTERN

DTV STATION
CHANNEL 29 - AVALON, CALIFORNIA

<u>Azimuth</u> <u>(° T)</u>	<u>Relative</u> <u>Field</u>	<u>ERP</u> <u>(dbk)</u>	<u>Azimuth</u> <u>(° T)</u>	<u>Relative</u> <u>Field</u>	<u>ERP</u> <u>(dbk)</u>
0	0.184	2.3	180	0.710	14.0
10	0.181	2.2	190	0.536	11.6
20	0.185	2.3	200	0.382	8.6
30	0.190	2.6	210	0.282	6.0
40	0.193	2.7	220	0.247	4.9
50	0.190	2.6	230	0.282	6.0
60	0.185	2.3	240	0.382	8.6
70	0.181	2.2	250	0.536	11.6
80	0.184	2.3	260	0.710	14.0
90	0.202	3.1	270	0.872	15.8
100	0.312	6.9	280	0.977	16.8
110	0.479	10.6	290	0.997	17.0
120	0.663	13.4	300	0.946	16.5
130	0.828	15.4	310	0.828	15.4
140	0.949	16.5	320	0.663	13.4
150	0.997	17.0	330	0.479	10.6
160	0.977	16.8	340	0.312	6.9
170	0.872	15.8	350	0.202	3.1