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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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November 12, 1998

Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

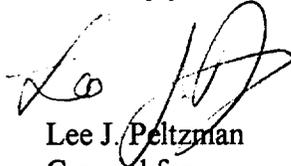
Re: MM Docket No. 97-234
GC Docket No. 92-52
GEN Docket No. 90-264

Dear Ms. Salas:

Transmitted herewith, on behalf of Orion Communications, Ltd., is an original and fourteen (14) copies of its Opposition to Petition for Reconsideration in the above-referenced rulemaking proceeding.

Please contact the undersigned should the Commission have any questions with respect to the filing of this pleading.

Sincerely yours,



Lee J. Peltzman
Counsel for
ORION COMMUNICATIONS, LTD.

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In The Matter of)	
)	
Implementation of Section 309(j) of the Communications Act – Competitive Bidding For Commercial Broadcast Instructional Television Fixed Services Licenses)	MM Docket No. 97-234
)	
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 Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

Orion Communications, Ltd. (“Orion”), by its attorneys, hereby files its Opposition to the Petition for Reconsideration filed by J. McCarthy Miller and Biltmore Forest Broadcasting FM, Inc. (collectively “the Petitioners”) with respect to the above-referenced First Report and Order, released August 18, 1998 (“Auction Order”). In support of its position, Orion submits the following:

Petitioners seek reconsideration by the Commission with respect to two matters covered in the above-captioned rulemaking. First, Petitioners request that the definition of “same market” be expanded. Orion has no position with respect to Petitioner’s initial request for relief.

However, Petitioners also allege that Orion has an unfair advantage because it presently serves as the permittee of Station WZLS(FM), Biltmore Forest, North Carolina and that the

Commission should therefore grant Petitioners individual relief. A review of Petitioners' arguments shows that they lack any substantive merit and should be rejected. Petitioners should be congratulated in one sense since their assertions, while outrageous, are inventive. However, the conclusions reached by Petitioners bare little or no resemblance to the facts or the state of the law.

Petitioners speculate that because Orion presently operates WZLS(FM), it must be amassing a fortune which it will use in an upcoming auction with the other competing Biltmore Forest applicants. Petitioners claim that fairness requires that Orion either forego participation in any forthcoming auction or submit a detailed accounting of its expenses so that the other Biltmore Forest applicants can receive a bidding credit equal to any profits earned by Orion together with any expenses paid by Orion toward non-operating expenses.

Initially, it should be noted that Orion has filed a Notice of Appeal challenging the Commission Auction Order. Orion does not believe that it or any of the other Biltmore Forest applicants should have to proceed through an auction in order to obtain a station license when all of the applicants have had their applications on file for over a decade and have already spent literally hundreds of thousands of dollars taking part in an FCC comparative hearing.

Moreover, unlike the other Biltmore Forest applicants, who have always viewed the Biltmore Forest station as a way to engage in financial speculation, Orion's principals are life-long area broadcasters. This what they do for a living. Therefore, to penalize Orion for making a profit with respect to its operation of WZLS(FM) while not requiring the other Biltmore Forest applicants to similarly account for profits amassed in their professions would be to discriminate unfairly against Orion. Further, Petitioners have not shown that Orion has earned any profits with

respect to its operation of Station WZLS(FM). In any event, while it is accurate that Petitioners were members of a consortium which operated the Biltmore Forest station on an allegedly non-profit basis, principals of those applicants received income pursuant to a Time Brokerage Agreement with a non-local broadcaster who operated their station. Yet, under their proposal Petitioners would not require an accounting of the profits made by their own principals and the other members of the consortium through the operation of their Biltmore Forest station.¹ The unfairness of Petitioners' request is obvious.

Finally, Petitioners claim that Orion will secure an unfair advantage through the operation of WZLS(FM) and will thereby violate principles established in Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945). In fact, Petitioners have made that same argument before the Commission and the Court previously, and have seen their argument uniformly rejected. This is not the proper proceeding for resurrecting a failed argument.

Orion's continued operation of Station WZLS(FM) only prejudices the other Biltmore Forest applicants to the extent that it keeps them from selling that station to a non-local, multiple-owner broadcaster. Orion continues to provide a valued program service to its home community. Any contention to the contrary by Petitioners is incorrect and should be summarily rejected.

¹ Additionally, while Petitioners assert that they operated their Biltmore Forest station on a non-profit basis, Orion is unaware of whether Petitioners ever filed an accounting with the FCC documenting that claim.

Respectfully submitted,

ORION COMMUNICATIONS, LTD.

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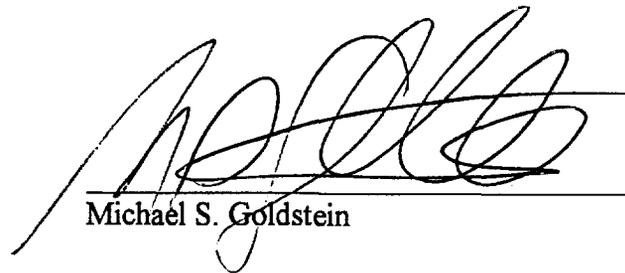
November 12, 1998

Its Attorneys

CERTIFICATE OF SERVICE

I, Michael S. Goldstein, secretary in the law offices of Shainis & Peltzman, Chartered, do hereby certify that on this 12th day of November, 1998, copies of the foregoing document were delivered via first class mail to the following:

Donald J. Evans, Esq.
Donelan, Cleary, Wood & Maser
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Washington, D.C. 20005



Michael S. Goldstein