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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 and Instructional Television Fixed Service 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

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November 12, 1998

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SUMMARY

KM Communications, Inc. submits this Opposition to the pleading, styled as a Petition for Reconsideration, filed by the law firm of Bechtel & Cole, Chartered on October 13, 1998.

Bechtel & Cole, Chartered's unwarranted allegations and slanderous attack on KM Communications, Inc. is wholly without factual support and is procedurally defective. Bechtel & Cole, Chartered ostensibly filed the Petition for Reconsideration to seek reconsideration of the Commission's decision not to evaluate the basic qualifications of mutually exclusive commercial broadcast applicants prior to conducting an auction. However, the Petition for Reconsideration is little more than an improper "petition to deny" against all of KM Communications, Inc.'s pending applications and an unwarranted attack on the company's principal. Even though it may not be required at this stage, KM Communications, Inc. provides documentation with this Opposition to the Commission to demonstrate that its good name should not be disparaged in this manner.

KM Communications, Inc. is deeply concerned with the unfounded attack that has been made on its character and qualifications and requests that the Commission summarily dismiss Bechtel & Cole, Chartered's Petition for Reconsideration, admonish Bechtel & Cole, Chartered, and award KM Communications, Inc. its expenses incurred in opposing the Petition for Reconsideration.

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To: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

KM Communications, Inc. ("KM"), by its counsel, and pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), respectfully submits this Opposition[1] to the pleading, styled as a Petition for Reconsideration of the First Report and Order[2] in the above-captioned

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[1] Oppositions to petitions for reconsideration in a rulemaking proceeding must be filed within 15 days of publication of notice of such petitions in the Federal Register. *See* 47 C.F.R. § 1.4(b)(1). Public notice of the Petition was published in the Federal Register on Wednesday, October 28, 1998, and therefore this Opposition may be submitted on or before Thursday, November 12, 1998. *See* 63 Fed. Reg. 57,694 (October 28, 1998).

[2] *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses; Reexamination of the Policy Statement on Comparative Broadcast Hearings; and Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases*, MM Docket No. 97-234, GC Docket No. 92-52 and GEN Docket No. 90-264, respectively, *First Report and Order*, FCC 98-194 (released August 18, 1998)(the "*Auction Order*").

broadcast auction proceeding, filed by the law firm of Bechtel & Cole, Chartered ("Bechtel") on October 13, 1998 (the "Petition"). In response to the Petition, KM submits the following:

I. Introduction.

Bechtel's allegation that KM is an "application mill" is an unwarranted and slanderous attack on a *bona fide* and fully qualified applicant, and is wholly without support, either in the Petition or on the facts (of which Bechtel apparently has no knowledge). KM more properly should be exalted -- and has been exalted by the Commission in this very proceeding[3] - as an example of a qualified woman-owned and minority-owned applicant trying to expand upon its experiences, both as a producer of local and foreign language programming and a Low Power Television ("LPTV") licensee, to succeed in the broadcasting industry.[4]

Bechtel ostensibly filed the Petition to seek reconsideration of the Commission's decision not to evaluate the basic qualifications of mutually exclusive commercial broadcast applicants prior to conducting an auction. *See* Petition at 1. However, the Petition appears to be little more than

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[3] Based in part on the "Comments of KM Communications, Inc." filed on January 26, 1998 in this proceeding, KM was invited by the Commission's Office of Communications Business Opportunities to participate as a panelist during the *Auctions '98* conference held on June 24, 1998, which KM (which was represented on the panel by its counsel) accepted. A copy of the Commission's invitation letter dated June 17, 1998 is attached hereto as Exhibit 1A.

[4] KM is 100% owned by Mrs. Myoung Hwa Bae ("Mrs. Bae"), who is also the President, Treasurer and sole director of KM. Mrs. Bae was born and educated in South Korea, came to the United States in 1972 and became a U.S. citizen shortly thereafter; accordingly, KM is a 100% woman-owned and minority-owned corporation. For more details regarding the personal history and qualifications of Mrs. Bae, and her programming and broadcast experiences and involvement with KM, attached hereto as Exhibit 1B are copies of slides from KM's presentation on the *Auctions '98* conference panel.

an improper "petition to deny" against all of KM's pending applications,[5] rather than a petition for reconsideration of the limited rulemaking issue, and KM is deeply concerned with the unfounded attack that has been made by Bechtel in the Petition -- without support[6] - on its character and qualifications.

In addition to being procedurally defective, the Petition is without merit. Even though it may not be required at this stage, KM provides documentation with this Opposition sufficient to demonstrate that KM is more than financially qualified to construct and operate all stations, collectively, for which KM filed applications.[7]

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[5] KM notes that Bechtel also directed its tirade against another applicant, North American Broadcasting Company ("NABC"). KM expresses no opinion regarding Bechtel's allegations against NABC or NABC's qualifications, but notes that KM may be readily distinguished from NABC in several respects. First, KM was an existing Commission broadcast licensee, with four LPTV stations purchased, licensed and operating, when KM filed its first full power Form 301 application in 1994; to our knowledge, NABC has no existing broadcast interests. Second, KM filed its first applications well before the Commission first waived its settlement restrictions in 1995 and KM was the first party to file for several vacant allotments. Although KM does not believe the timing itself has any probative value, NABC did not file its first application until after the 1995 settlement window. Last, KM also is now a permittee, in the process of constructing six full power stations (and Mrs. Bae holds interests in permittees for another seven full power stations); to our knowledge, NABC holds no permits.

[6] Bechtel offers only general allegations and conclusory statements in support of its Petition, with no evidence (which is not surprising since none exists) or even an affidavit (which also is not surprising since Bechtel has no knowledge of the matters upon which its statements are based) to support its position. In contrast, attached hereto as Exhibit 2 is an affidavit from KM (the "Affidavit"), executed under penalty of perjury by Mrs. Bae, attesting to the facts presented herein.

[7] KM emphasizes that since this proceeding is not the proper forum for considering KM's financial qualifications, and due to confidentiality and competitive considerations in light of the upcoming auctions, KM has not detailed all of its financial qualifications and supporting documentation, but rather has provided details only on such financial information that KM deems sufficient to alleviate any possible Commission concerns regarding KM's financial qualifications; additional documentation can and would be produced by KM in the appropriate circumstances.

II. The Petition Is Procedurally Defective.

As an initial matter, KM submits that the Petition is procedurally defective, in several respects. First, Bechtel does not demonstrate that it is an "interested person" with standing to file the Petition, *see* 47 C.F.R. § 1.429(a), but rather simply states only that it "has clients [plural] who have interests adverse to those of ... KM." *See* Petition at 1. Based on KM's review of the applications that are mutually exclusive with the applications KM still has pending, Bechtel is the counsel of record for only one applicant, CD Broadcasting, Inc. ("CD"), in one proceeding.[8] Although Bechtel does not explain why it declined to disclose the real party in interest behind its pleading (*i.e.*, CD), the reason may become more apparent from this Opposition. KM submits that the Petition should be dismissed as defective or denied, without consideration, since Bechtel did not disclose CD as the real party in interest nor otherwise demonstrate its standing to file the Petition.

Second, Bechtel impermissibly relies upon "facts" that have not been presented to the Commission previously. Assuming that one could graciously characterize Bechtel's unsupported allegations as facts and, therefore, the Petition does not meet the Commission's standards for a petition for reconsideration. *See* 47 C.F.R. § 1.429(b). The Petition relates to applications that have been on file since 1997, including applications filed as early as 1994, and Bechtel does not cite any changed events or circumstances, lack of knowledge or public interest reasons for considering its allegations now. *Id.* Moreover, Bechtel did not participate in this proceeding

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[8] KM and CD are the only mutually exclusive applicants for a construction permit for a new FM radio station on Channel 255A at Parkersburg, Iowa (File Nos. BPH-951108MQ and BPH-951027MC, respectively).

previously by filing comments or a reply, although we note that CD, the apparent real party in interest, did file reply comments.[9] Accordingly, the Petition is procedurally defective and should be dismissed or denied. While we acknowledge that the Commission has stated that interested parties are not required to participate below in a notice and comment rulemaking to file a petition for reconsideration,[10] the failure of Bechtel to do so substantiates the improper purpose of the Petition.

Third, the Petition is little more than a thinly-disguised petition to deny all of KM's applications, which is unsupported and outside the scope of the broadcast auction rulemaking proceeding. The Commission has clearly stated that petitions to deny may be filed only after an auction, in response to a Public Notice announcing that the winning bidder's application has been accepted for filing. *See Auction Order* at ¶¶ 84 and 165.

Despite these fatal procedural defects, KM is responding to the Petition to address the reckless accusations levied against it, as well as to address to the purported legal basis for the Petition.

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[9] *See Auction Order* at Appendix A. While we acknowledge that the Commission failed Bechtel as do so this, KM notes that both comments and reply comments were filed by a "Susan M. Bechtel," *id.*, who KM understands is the wife of the counsel filing the Petition. However, neither CD nor Susan Bechtel were among the parties cited by the Commission as filing comments in support of Commission review of applicant qualifications or petitions to deny prior to an auction. *Id.* at n. 76.

[10] *See FM Channel Assignments*, 49 RR 2d 103 (1991).

III. The Commission Properly Decided To Consider Only The Basic Qualifications Of Applicants That Were High Bidders In Auctions.

The purported basis for Bechtel's bludgeoning of KM's is to argue that the Commission should reconsider its decision not to investigate the qualifications of applicants prior to auctions. In the *Auction Order*, the Commission considered and rejected arguments that it should consider an applicant's basic qualifications and/or entertains petitions to deny prior to an auction. *Id.; see also,* 47 C.F.R. § 73.5006(a). The Commission reasoned that this approach would conserve the time and resources of the applicants and the Commission, reduce potential delays in commencement of auctions, and speed service to the public. *Id.* at ¶ 84. The Commission has consistently adopted this approach, of considering petitions to deny only at the post-auction stage, for other services which use auctions, based on essentially the same reasoning.[11] The

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[11] *See* 47 C.F.R. §§ 1.2105-1.2109 (1998), *Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Second Report and Order,* 9 FCC Rcd 2348, paras. 165-168 (1994); *Broadband PCS, Fifth Report and Order*, 9 FCC Rcd 5532 para. 60 (1994); *Narrowband PCS, Third Report and Order*, 9 FCC Rcd 2941 paras. 41-44 (1994); *Multipoint Distribution Service, Report and Order*, 10 FCC Rcd 9589 paras. 130-134 (1995); *General Wireless Communications Services, Second Report and Order*, 11 FCC Rcd 624 paras. 38-47 (1995); *Direct Broadcast Satellite Service, Report and Order*, 11 FCC Rcd 9712 paras. 191-193 (1995); *Upper 800 MHZ SMRS, Eighth Report and Order*, 11 FCC Rcd 1463 paras. 183-195 (1995); *Cellular Unserved Area Licensing, Ninth Report and Order*, 11 FCC Rcd 14769 paras. 25-28 (1996); *Paging Systems, Second Report and Order*, 12 FCC Rcd 2732 paras. 117-128 (1997); *LMDS, Second Report and Order*, 12 FCC Rcd 12545 para. 232 (1997); *Lower 800 MHZ SMRS, Second Report and Order*, 12 FCC Rcd 19079 paras. 251-254 (1997); *37.0-38.6 GHz and 38.6-40.0 GHz Band, Report and Order*, 12 FCC Rcd 18600 paras. 123-126 (1997); *General Wireless Service, Third Report and Order*, 13 FCC Rcd 314 paras. 63-82 (1997); *Commercial Broadcast and Instructional Television Fixed Service Licenses, First Report and Order*, MM Docket No. 97-234, FCC 98-194 paras. 144-146, 149-153 (released August 18, 1998) *See also* 47 C.F.R. §§ 1.1604-1.1623 (for lottery of low power television service) and *Reexamination of Comparative Standards for Noncommercial Educational Applicants, Further Notice of Proposed Rule Making*, MM Docket No. 95-31, FCC 98-269, para. 19 (released October 21, 1998) (for lottery of noncommercial educational broadcast stations).

Commission also reasons that the nature of auctions themselves "lessens the incentive for insincere application filings," particularly if an applicant is not financially qualified. *Id.* at ¶¶ 174 and 176.

Contrary to its assertions, Bechtel makes no "persuasive" arguments that would support reconsideration of the Commission's position. *See* Petition at 2. Bechtel alludes generally that "legitimate" or "bona fide" applicants would be disadvantaged in some unspecified manner if required to bid against applicants that Bechtel deems unqualified, suggesting that an unqualified applicant may "contaminate" the auction process. *Id.* The paradox of Bechtel's position is that the only effect an additional bidder could have is the allegedly financially unqualified applicant may pay more for the license before the permit is issued.

Bechtel does not attempt to explain how an unqualified applicant would benefit from participating in or winning an auction. Prior to an auction, when a settlement may be allowed, the applicants may evaluate competing applicants' qualifications for themselves, and choose to entertain a settlement or not. Any settlement would be limited to (i) an applicant's out-of-pocket expenses, so there is no profit motive; (ii) a *bona fide* merger, in which any applicant is free not to participate; or (iii) a technical solution, which is not possible for full power television or FM radio applications, which are based on allotments. *See* 47 C.F.R. § 73.3525. Therefore, an allegedly unqualified applicant would not profit in a settlement or would not be invited to participate in a merger. Any *bona fide* applicant can control whether a settlement occurs. This often happened during the settlement windows when KM, or other qualified applicants, refused to settle certain proceedings rather than pay unqualified or less qualified applicants to dismiss their applications. None of the settlement opportunities listed by Bechtel, *see* Petition at 7, support any incentive for an unqualified applicant for these same reasons.

IV. Bechtel's Suggestion That KM Is An "Application Mill" Is Contradicted By The Facts, As Well As KM's History And Actions.

A. Mrs. Bae's Options For Entering The Broadcast Industry And To Distribute Video Programming.

Since coming to the United States in 1972, Mrs. Bae and her family have been actively involved in business and civic activities in their community, *see* Exhibit 1B, including the Foster Bank.[12] In addition to KM, Mrs. Bae owns 100% of The Korean American Broadcasting Co., Inc. ("KABC"), a video programming production company, which has been producing Korean and other local and foreign language programming since the late 1980s, providing service to an otherwise underserved segment of the population. *Id.* KABC initially leased time to air the programming on cable television systems and then on a local television station in the Chicago area, despite the extremely high cost of the leased time which made the operation unprofitable for KABC. *Id.*

There are limited options for entities seeking to enter the broadcasting industry, whether the entity is a woman- and minority-owned business like KM or otherwise: (i) buy existing stations, which in the 1990s has been a very expensive proposition; (ii) partner with an existing broadcaster, which often comes with strings attached (such as options to purchase the station, or

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[12] Among other business interests, Mrs. Bae was an original incorporator in 1989 of Foster Bank, and has been the Chairman of the Board of Directors since 1991; Mrs. Bae is also the largest single shareholder, with approximately one-third of the shares, and her immediate family owns approximately 59% of the shares. Foster Bank currently has over $170 million in assets, with approximately 75% of its deposits from the Asian-American community in the Chicago area.

to program the station), although valuable experience may be gained by such arrangements;[13] or (iii) file an application for a vacant allotment and, if successful, build a station.

KM's initial approach was to purchase stations, and since full power stations often are not available to purchase, KM purchased four LPTV stations in 1993-94 that it still owns and operates, providing a wide range of ethnic or minority-oriented and locally produced programming. *Id.* Even LPTV stations, however, are very expensive in major markets such as Chicago and Atlanta -- KM has expended approximately $650,000 to upgrade its LPTV station, WOCH-LP, in Chicago, Illinois and approximately $200,000 to upgrade its LPTV station in Atlanta, Georgia, WSKC-LP -- and as a secondary service they represent a very high risk, since LPTV stations may be forced off-the-air if the spectrum is reallocated for other purposes or auctioned to generate revenues for the federal government. *Id.* Recognizing the limitations of purchasing LPTV stations, KM turned to applying for permits to construct full power stations on vacant allotments targeting underserved television markets and FM radio markets with ethnic or minority communities. *Id.*

B. Bechtel's Information Is Largely Incorrect, Leading To Its Erroneous Conclusions.

Bechtel had some difficulty with the facts regarding the applications filed by KM and their status, *see* Petition at 8-10, so KM is providing the correct information herein. Exhibit 3A attached hereto provides a complete list of the fifty Form 301 applications for construction permits

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[13] For example, Mrs. Bae is teamed with an experienced partner to develop one of the first television permits granted to KM, for Sierra Vista, Arizona.

for full power broadcast stations filed by KM to date, with the status of each application. *See* Exhibit 3A.

The status of the 33 television applications filed by KM may be summarized as follows: (i) 4 applications and construction permits have been granted to KM, for which KM has paid out over $130,000 in settlement payments to competing applicants for the dismissal of their applications;[14] (ii) 5 applications have been resolved through *bona fide* merger settlements approved and granted by the Commission, including 2 proceedings which also involved settlement payments to dismissing applicants that chose not to participate in the merger settlement, under which Mrs. Bae individually or KM received a *pro rata* interest in the permittee;[15] (iii) 8 applications remain pending, to be resolved by a Commission auction, in which KM expects to be an active bidder; (iv) KM has agreed to dismiss 14 applications pursuant to settlement agreements, 12 of which have been granted and 2 of which remain pending; and (v) of the 2

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[14] The applications and construction permits are for Sierra Vista, Arizona; Iowa City, Iowa; Jackson, Wyoming; and Flagstaff, Arizona. Bechtel incorrectly states that the Sierra Vista application was "uncontested" and awarded without a settlement, *see* Petition at 9, when that permit was granted as the result of a settlement under which KM paid the dismissing applicant to dismiss his application. *See* Exhibit 3A. The Sierra Vista permit was recently assigned in a pro forma transaction to Sierra Television LLC, an entity controlled by Mrs. Bae.

[15] The applications and construction permits are for Shawnee, Oklahoma; Muskogee, Oklahoma; Greenville, North Carolina; Holbrook, Arizona; and Marianna, Florida. In the Muskogee and Marianna settlements, Mrs. Bae has already contributed $80,000 in cash to the permittees to fund her *pro rata* share of over $200,000 in settlement payments to dismissing applicants plus other organizational expenses.

remaining applications, KM voluntarily requested the dismissal of its Newton, Iowa application and the Commission returned its Omaha, Nebraska application.[16]

The status of the 17 FM radio applications filed by KM may be summarized as follows: (i) 3 applications and construction permits have been granted to KM, including 2 "singleton" applications and 1 private auction settlement under which KM has paid out $130,000 in settlement payments to the three competing applicants for the dismissal of their applications;[17] (ii) 1 application, for Merced, California, resolved through a *bona fide* merger settlement approved and granted by the Commission, which included $150,000 in settlement payments to three dismissing applicants that chose not to participate in the merger settlement, and under which KM holds a 50% interest in the permittee; (iii) 9 applications remain pending, to be resolved by a Commission auction, in which KM expects to be an active bidder; (iv) 3 applications have been dismissed pursuant to settlement agreements; and (v) 1 application, for Two Rivers, Wisconsin, was returned by the Commission as prematurely filed, due to an error by KM's counsel.

KM does not understand the point, if any, Bechtel attempts to make by stating that KM knew or should have known that filing its applications involved or could involve conflicts with

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[16] KM requested the dismissal of the Newton application rather than request a multiple ownership waiver due to a potential contour overlap between the Newton application and an amendment to its Ames, Iowa application. The Omaha allotment was originally filed without a request for waiver of the Commission's freeze on applications in the top 30 television markets, *Advanced Television Systems and their Impact on the Existing Television Broadcast Service, Order*, 52 Fed. Reg. 28,346 (July 29, 1987) ("*Application Freeze Order*"); a petition for reconsideration, including the necessary waiver request, are pending before the Commission. *See* Exhibit 3A at n.7.

[17] The applications and construction permits are for Pearson, Georgia and St. Johns, Arizona (granted as singleton applications) and Atlanta, Illinois (granted under a private auction settlement approved by the Commission).

competing applications. *See* Petition at 8. Perhaps Bechtel is suggesting that permits should be awarded on a first-come, first-served basis, but under *Ashbacker* and its progeny,[18] a basic tenet of the Commission's broadcast licensing process is that any qualified and interested party may file an application for a vacant allotment, with the construction permit awarded to the applicant that the Commission determines will best serve the public interest. Furthermore, for many of its television applications KM was the first party to file for a long-vacant allotment,[19] and the FM radio applications were filed in response to filing windows set by the Commission. Bechtel does not explain how KM could predict, or why KM should be concerned, whether other parties would file competing applications when KM is the first or one of the first applicants to file for a given allotment.

C. KM's Programming Statements Satisfy All Commission Requirements.

Bechtel attempts to cast aspersions on KM by describing KM's applications as "cookie cutter," particularly complaining about KM's planned program service statements. *See* Petition at 8. As Bechtel is well aware, the Commission relaxed its requirements for programming statements from proposed commercial broadcast stations, beginning in 1981 with radio and

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[18] *Ashbacker v. F.C.C.*, 326 U.S. 327 (1945).

[19] For example, KM was the first applicant (or one of the first of a few applicants acting independently) to file television applications for at least 8 markets, thereby establishing the "B cut-off" date, including for: Boise, Iowa City, Salt Lake City, Ames, Batavia, Albuquerque, Muskogee and Hutchinson. *See Public Notices, Report Nos. A-188, A-190 and A-192* (released February 2, 1995, March 30, 1995 and September 22, 1995, respectively).

continuing in 1984 for television.[20] Briefly, the Commission permits generalized programming statements, instead of the detailed programming statements formerly required based on strict guidelines for specific types of programming, finding in those proceedings that market incentives would be sufficient to ensure that stations served the needs and interests of their communities of license.

KM's program service statements meet the Commission's general requirements. KM indicates that it will rely upon the experience it has gained as a LPTV broadcaster, and that it will ascertain the needs and interests of its proposed communities of license and provide programming responsive to those needs, including programming for children and in compliance with the Commission's political broadcasting rules.[21] Since KM's programming statement is fully responsive to the Commission's requirements, it is not improper -- in fact it makes sense -- that KM's programming statement would be the same in each of its applications, since KM intends a consistent and responsive approach in determining programming for each community. KM notes that it has a proven track record of providing programming that is responsive to the needs and interests of the communities it serves, as evidenced by the programming provided on its LPTV stations. *See* Exhibit 1B. KM also notes that, due to the freeze on comparative hearings that was

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[20] *See Deregulation of Radio, BC Docket No.* 79-219, *Report and Order*, FCC 81-17, 84 FCC 2d 968, 49 RR 2d 1 (1981) and *Memorandum Opinion and Order*, FCC 86-222, 104 FCC 2d 505, 60 RR 2d 789 (1986); *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, MM Docket No.* 83-670, *Report and Order*, FCC 84-293, 98 FCC 2d 1076, 56 RR 2d 1005 (1984).

[21] *See* Petition at Exhibit 4 (KM's planned program service statement from its application for a new FM radio station at Parkersburg, Iowa).

in effect when KM filed its applications, it would be difficult to predict in any detail the specific programming needs of any given community as of the time that the proposed new station would begin broadcasting.

Bechtel's attack on KM's programming statements is even more perplexing when one considers similar programming statements from applications prepared and filed by Bechtel on behalf of its different clients. Attached hereto as Exhibit 4 are copies of planned program service statements from two applications filed by Bechtel on behalf of two separate clients: the first is from the application filed by Bechtel on behalf of CD, the likely real party in interest behind the Petition, for Parkersburg, Iowa (File No. BPH-951027MC), and the other from an application filed by Bechtel on behalf of Mesquite Communications Company, Inc. ("Mesquite") for a new FM station at Mesquite, Nevada (File No. BPH-960826MU). If KM's programming statement is a "brief canned statement" as Bechtel claims, *see* Petition at 8, the CD and Mesquite statements take "brief" and "generalization" at least one step further. Bechtel's programming statements are as follows:

> Mesquite Communications Company, Inc. proposes to broadcast news, public affairs programs and public service announcements relating to the issues of public concern facing the proposed service area.
>
> CD Broadcasting, Inc. proposes to broadcast news, public affairs programs and public service announcements relating to issues of public concern facing the proposed service area.

While it makes sense for KM to take the same approach with respect to its programming needs in various communities, it seems odd that CD and Mesquite, unrelated parties, would use the exact same programming statement -- word for word, except for the names of the applicants and

one missing "the" one statement. KM submits that it is highly improper, or at least disingenuous, for Bechtel to question KM's programming statements when Bechtel has knowledge that KM 's programming statements fully comply with the Commission's requirements. The Commission should not tolerate such abuses of its processes.

D. Bechtel's Characterization Of KM As An "Application Mill" Is Unsupported and Scandalous.

KM's actions and the facts clearly contradict Bechtel's claims that KM is an "application mill" that filed applications for the purpose of seeking a settlement. *See* Petition at 7, 10-12. First and foremost, as demonstrated herein by Mrs. Bae's track record as a provider of responsive video programming, and KM's history as an LPTV station licensee, Mrs. Bae and KM are responsible broadcasters and are simply trying to build upon their experiences and expand further in the broadcasting industry. The Petition is simply another example of the obstacles that woman- and minority-owned businesses must overcome to gain a voice in broadcasting.

Second, KM filed several applications before the Commission opened the first 90 day settlement window in September 1995 [22] and again before Congress opened a new period of settlements,[23] permitting applicants to pay competing applicants more than their expenses to dismiss their competing applications. There was little incentive for KM, as there would be little

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[22] *See FCC Waives Limitations on Payments to Dismissing Applicants in Universal Settlements of Cases Subject to Comparative Proceedings Freeze Policy, Public Notice*, 10 FCC Rcd 12182 (1995) ("*Settlement PN*").

[23] *Balanced Budget Act of 1997*, Pub. L. No. 105-33, 11 Stat. 251 (1997) ("*Balanced Budget Act*").

incentive for any party, to file an application at a time when the possibility of a settlement offered only two options - a settlement which is limited to out-of-pocket expenses, or a *bona fide* merger settlement where there is the very real and great risk of going into business with a party with which one has no other business or other relationship.[24]

Third, it would not make sense if KM is just an "application mill," in the game for a quick buck, for Mrs. Bae or KM to spend the amount of money they have for settlement payments and cash capital contributions to obtain the 11 permits (or interests in permits) they have acquired, or for KM to spend the money that it has toward acquiring land or leases for transmitter sites and constructing the new stations. This does not even consider the other markets where KM offered settlement payments to the competing applicants to dismiss their applications but where KM's settlement negotiations were unsuccessful,[25] or the several pending applications for which KM has already purchased the land for its proposed transmitter site.[26]

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[24] KM has actual experience with the second situation. The settlement in Shawnee, Oklahoma, resulted in a merger between Mrs. Bae and the one competing applicant, each party holding a 50% interest in the permittee. This double-negative-control arrangement between strangers has severely hampered development of the station. *See* BPCT-950331KE.

[25] For example, Bechtel, as well as CD, the apparent real party in interest behind the Petition, were well aware that KM was a serious applicant, intent upon obtaining that permit from KM's settlement negotiations for the new FM station at Parkersburg during the most recent 6 month settlement period. In response to an inquiry from CD, KM indicated that KM wanted to obtain the permit, and KM offered $50,000 to CD to dismiss its application. Indeed, it likely was KM's efforts to settle the Parkersburg proceeding which convinced CD that it could not succeed at auction, and prompted the filing of the Petition as an alternate means of hindering KM's entry into the Parkersburg market.

[26] For example, a family land trust has already acquired the land for the proposed transmitter site for KM's application for Channel 62 at Arcade, New York. *See* BPCT-960405XF.

Quite simply, KM intends to obtain the permits and construct as many of the stations it has proposed as is economically feasible under the new, given the new economic constraints imposed by the Commission's adoption of auctions to award broadcast construction permits.

E. KM Anticipated That Any Mutually Exclusive Applications Would Eventually Be Resolved By Comparative Hearings.

When KM began filing its applications, KM anticipated that if any of its applications were subject to mutually exclusive applications, the competing applications eventually would be resolved by comparative hearings, despite the freeze on comparative hearings then in place.[27] Bechtel points to the fact that KM has "0 prosecutions of an MXed [sic] application to the conclusion on the merits." *See* Petition at 11. However, KM was unable to prosecute any applications through the comparative hearing process due to the comparative hearing freeze imposed by the Commission in light of the *Bechtel*[28] decision -- of which Bechtel is obviously very well aware. Furthermore, as an entity 100% owned by a minority female, KM expected that it would fare well under a comparative hearing process, depending of course on whatever new comparative criteria the Commission would have elected to adopt.

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[27] *See Application Freeze Order*. KM participated in the rulemaking proceeding in which the Commission proposed to determine new comparative criteria. *See Notice of Proposed Rule Making, Reexamination of the Policy Statement on Comparative Broadcast Hearings*, 7 FCC Rcd 2664 (1992); *Further Notice of Proposed Rule Making*, 8 FCC Rcd 5475 (1993); *Second Further Notice of Proposed Rule Making*, 9 FCC Rcd 2821 (1994); *Notice of Proposed Rule Making, Competitive Bidding for Commercial Broadcast and ITFS Service Licenses*, 12 FCC Rcd 22,363 (1997); *First Report and Order*, FCC 98-194 (August 18, 1998).

[28] *Bechtel v. F.C.C.*, 957 F.2d 873 (D.C. Cir. 1992) (Bechtel I) and *Bechtel v. F.C.C.*, 10 F.3d 875 (D.C. Cir. 1993) (Bechtel II).

F. Congress As Well As The Commission Have Authorized, And Even Encouraged, Settlement Of Comparative Proceedings.

Bechtel appears unduly concerned by the fact that KM has entered into settlement agreements that have resulted (or would result if approved) in the dismissal of roughly one-third (17 out of 50) of KM's applications, predominately among KM's television applications. *See, e.g.,* Petition at 3-4 and 9-12. The simple truth, however, is that first the Commission and then Congress expressly authorized exactly the types of settlements in which KM has participated, on the grounds that the public interest would be served by reducing the backlog of frozen comparative cases.[29] For the 90 day settlement window in 1995, the Commission expressly found that the public interest rationale behind the settlement restrictions rule would not be adversely affected since the pending applications were filed prior to the announcement of the settlement window, and therefore applicants could not reasonably have anticipated the settlement window and filed applications for an improper purpose.

KM's settlement decisions were driven by simple, rational, economic decisions, as befits an entity owned and controlled by a successful businesswoman such as Mrs. Bae. During the first 1995 settlement window, KM generally negotiated settlements under some very specific criteria: (i) KM agreed to pay settlement payments in markets where the construction permit could be obtained for what KM perceived as a reasonable amount; and (ii) KM agreed to dismiss applications for a settlement payment in certain markets where KM's priorities had changed, or where KM was offered more than what KM perceived as a reasonable value for the permit, based on KM's own willingness to pay for such permit. KM used essentially the same criteria during

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[29] *See Settlement PN* and *Balanced Budget Act*.

the 6 month settlement window enacted by Congress, with one significant exception: since it was then fairly certain that pending mutually exclusive applications would be resolved by auction, KM agreed to settlements in markets where the total consideration offered for the settlement exceeded the amount that KM itself would be willing to pay in some future auction.[30]

Mrs. Bae and KM enjoy the position they are in today based on sound business decisions, and KM's settlement decisions were simply that: business decisions, and not decisions made for any improper purpose.

V. Bechtel's Unfounded Allegations Of Misrepresentation.

KM now turns to the aspect of the Petition which Mrs. Bae and KM find most disturbing: Bechtel's unsupported and unwarranted allegations that Mrs. Bae or KM have made false certifications or misrepresentations to the Commission or that they are not financially qualified. Although Mrs. Bae and KM do not believe that they are required to respond to these false allegations at this time, due to the defective procedural aspects of the Petition, they have elected to proceed in order to clarify the record and defend their reputations.

First, Bechtel alleges that the declarations filed by KM under various settlements, stating that KM's applications were not filed for the purpose of entering into a settlement, are false. *See* Petition at 10-12. KM has already shown in this Opposition that its applications clearly were not

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[30] This explains why KM agreed to more settlements involving television rather than FM radio applications; since "white knight" settlements were permitted, parties agreed to pay as much as $5 million or more in settlement payments to obtain certain construction permits for television stations, which amounts were well in excess of what KM would be willing to bid at an auction (even with the considerable financial resources that KM has at its disposal).

filed for the purpose of seeking settlements, as demonstrated by the facts that: (i) KM's applications generally were filed when there was little or no incentive to expect a settlement, and KM was often the first party to file for the vacant allotments; (ii) KM itself was the party paying other applicants to obtain permits under settlements; (iii) KM has expended considerable funds not only to obtain permits and begin construction of several stations but also to acquire land for transmitter sites for applications that are still pending; and (iv) KM intends to be an active bidder in the auctions that will resolve its still pending applications.

Second, despite an obvious lack of knowledge of the financial qualifications of Mrs. Bae or KM, *see* Exhibit 3A, Bechtel alleges that KM is not financially qualified to construct and operate all of the stations proposed by KM's applications.[31] In Exhibit 3 attached hereto, Mrs. Bae and KM refute Bechtel's wild accusations and demonstrate their financial qualifications, as of the date each and every application was filed, to construct and operate all of the proposed stations simultaneously for three months without revenue. KM emphasizes that it has not disclosed all of the financial assets upon which Mrs. Bae and KM relied in making their financial certifications, but rather are providing only such information as they deem sufficient to refute Bechtel's unfounded accusations, due both to the confidential and proprietary nature of the information as well as the competitive benefit a fuller disclosure may confer on applicants against which KM must bid in upcoming auctions. Again, although Mrs. Bae and KM do not believe that they are required to demonstrate their basic qualifications at this time due to the Petition's

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[31] *See* Petition at 14. Bechtel also attacks the Commission's rationale for not making financial qualification determinations prior to an auction, *id.* at 14-15, but Bechtel's explanation appears either incomplete or illogical, so KM has no comment on those arguments.

procedural defects, they will not stand for their good reputation to be questioned. Full disclosure of the financial qualifications of Mrs. Bae and KM would be submitted to the Commission upon request in the appropriate forum.

VI. The Commission Should Sanction Bechtel For Filing An Improper And Abusive Pleading.

At some point advocacy crosses the line and becomes abusive. We submit that the Petition surmounts this standard. Therefore, we urge the Commission to dismiss the Petition, admonish Bechtel, have Bechtel apologize to KM and Mrs. Bae, and award KM its expenses incurred in opposing the serious and disparaging charges recklessly leveled against KM and Mrs. Bae.

Bechtel's Petition constitutes an improper petition to deny that was filed, we submit, to benefit an undisclosed party in interest. This Petition wastes the valuable time of the Commission and drains KM's resources as they attempt to prosecute its valid applications before the Commission. As was stated in *Better Television, Inc.*, "[t]he Commission has a tremendous workload, and we can not tolerate conduct by a party, or any participation by an attorney in conduct, which serves to interfere with the orderly and expeditious disposition of the important matters pending before us."[32]

The Commission has, in the past, admonished attorneys for the conduct exhibited by Bechtel in the Petition. For example, in *Television Broadcasters, Inc.*, the Commission expressly disapproved of an attorney's conduct when he called into question the character of a party before the Commission, with no basis in fact, and cautioned the attorney to never engage in such conduct

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[32] 16 RR 2d 973, 679 (1969).

again.[33] The unsupported charges offered by Bechtel are of a similar nature, and mandate strong action to ensure that they will not be repeated. Therefore, KM requests that Bechtel be admonished and required to reimburse KM for its expenses incurred in opposing the Petition.[34]

VII. Conclusion.

WHEREFORE, the above premises being considered, KM respectfully requests that the Commission summarily dismiss the Petition and award KM the relief requested herein

Respectfully submitted,
KM COMMUNICATIONS, INC.

By: _____
Alan C. Campbell
Jeffrey L. Timmons
Nathaniel J. Hardy*

Its Attorneys

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Washington, D.C. 20036-3101

(202) 728-0400 (telephone)
(202) 728-0354 (facsimile)

November 12, 1998

* Bar admission pending

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[33] 6 RR 2d 293, 297 (1965).

[34] *See* 47 C.F.R. § 1.24 (1998).

Exhibit 1A

Federal Communications Commission
Washington, D.C. 20554

JUN 17 1998

RECEIVED JUN 19 1998

KM Communications
c/o Jeffrey L. Timmons, Esq.
Irwin, Campbell and Tannenwald
1730 Rhode Island Avenue, N.W., Suite 1730
Washington, D.C. 20036

Dear Mr. Timmons;

This is to invite you to appear as a guest panelist representing your client, KM Communications, on a panel on the subject of the Federal Communications Commission's recent proposal to open broadcast properties to competitive bidding via auction. The panel will take place on June 24, 1998 at the Ronald Reagan Building in Washington, D.C. as part of a one-day free conference entitled **Auctions 98** (see enclosed materials). The panel on broadcast auctions will be held during the period from 11:05 to 11:55 A.M. on June 24.

The Commission, through its Office of Communications Business Opportunities, of which I am Director, will present at **Auctions '98** a series of panel discssions on various services that are scheduled to be the subject of FCC- originated auctions in 1998 or early 1999.

The purpose of the Conference is to inform potential bidders, investors, and other entrepreneurs about services in which the FCC will hold auctions in the coming year. Services in which auctions are scheduled to take place include 800 Mhz Specialized Mobile radio, 220 Mhz, 39 Ghz, location monitoring services, Public Coast Stations, broadcast opportunities, and the reauction of FCC-held licenses from prior auctions.

We are extending this invitation to KM communications based on our review of comments and reply comments filed in response to the Mass Media Bureau's Notice of Proposed Rule Making concerning broadcast auctions.

After reviewing all the comments filed in response to the Notice of Proposed Rulemaking in the Broadcast Auctions proceeding, OCBO selected a panel which includes two different kinds of broadcasters, i.e. both a full-power commercial broadcaster and a low-power TV broadcaster. OCBO believes that that this combination will provide an appropriate balance of the interests of small business and larger-scale operators, enabling future broadcasters to gain a broad understanding of opportunities available through future broadcast auctions.

If you are interested, please contact Belford Lawson of my staff for further information. His telephone number is (202)418-7264. We look forward to cooperating with you in presenting the broadcast auctions panel.

Sincerely Yours,

Catherine J.K. Sandoval
Director
Office of Communications Business Opportunities

KM COMMUNICATIONS, INC. - BACKGROUND

- MRS. MYOUNG HWA BAE, 100% OWNER, DIRECTOR & PRESIDENT
- GRADUATED UNIVERSITY OF KOREA
  SOOKMYONG WOMEN'S UNIVERSITY
- MRS. BAE CAME TO U.S. IN 1972, NATURALIZED SHORTLY AFTER
- SUCCESSFULLY INVESTED IN REAL ESTATE, OTHER INVESTMENTS
- SERVICE ON BOARD OF VARIOUS CIVIC GROUPS,
  BUSINESSES, AND A UNIVERSITY

Irwin, Campbell & Tannenwald, P.C., June 24, 1998

ORIGINAL GOALS

- PROVIDE PROGRAMMING, INCLUDING FOREIGN LANGUAGE PROGRAMMING, TARGETED TO SERVE THE NEEDS AND INTERESTS OF ETHNIC AND MINORITY POPULATIONS IN THE COMMUNITY
- FOSTER PRIDE AND CULTURAL AWARENESS IN SUCH COMMUNITIES
- OFTEN ONLY SOURCE OF INFORMATION FOR
  SUCH COMMUNITIES, ESPECIALLY IN EMERGENCY

Irwin, Campbell & Tannenwald, P.C., June 24, 1998

PROGRAMMING BACKGROUND

- LATE 1980s, KOREAN LANGUAGE PROGRAMMING ON CATV
- FORMED KM IN 1990 TO INVEST IN BROADCAST STATIONS
- BEGAN LEASING TIME ON CHICAGO STATION IN 1993:
  - KOREAN LANGUAGE PROGRAMMING, 2 HOURS/DAY, 7 DAYS/WEEK
- KM PURCHASED THREE LPTVs IN 1993, FOURTH LPTV IN 1994
- KM MADE SUBSTANTIAL INVESTMENT TO UPGRADE LPTV STATIONS
- BEGAN LOCAL AND FOREIGN LANGUAGE PROGRAMMING ON LPTV STATIONS AFTER UPGRADES, IN LATE 1997 AND EARLY 1998

Irwin, Campbell & Tannenwald, P.C., June 24, 1998

CURRENT LPTV PROGRAMMING

- WOCH-LP, CHICAGO, ILLINOIS (CHANNEL 28):
  - KOREAN, RUSSIAN & SPANISH PROGRAMMING, 12 HOURS/DAY, 7 DAYS/WEEK
- WMKE-LP, MILWAUKEE, WISCONSIN (CHANNEL 8):
  - 3 HOURS/WEEK PROGRAMMING LOCALLY-PRODUCED IN CONJUNCTION WITH MARQUETTE UNIVERSITY
  - AUCTION FOR DISPLACEMENT APPLICATION?
- WSKC-LP, ATLANTA, GEORGIA (CHANNEL 59)
  - LOCALLY-PRODUCED RELIGIOUS PROGRAMMING, 5 HOURS/DAY, 7 DAYS/WEEK
- WOCK-LP, CHICAGO, ILLINOIS (CHANNEL 13):
  - KOREAN LANGUAGE PROGRAMMING, 5 HOURS/DAY, 7 DAYS/WEEK

Irwin, Campbell & Tannenwald, P.C., June 24, 1998

CHALLENGES AND APPROACH

- LPTV IS SECONDARY, SUBJECT TO DISPLACEMENT
- HIGH COST, LOW REVENUE DUE TO COVERAGE AREA, AUDIENCE
- EXPENSIVE TO PURCHASE EXISTING FULL POWER STATIONS
- AVAILABILITY OF VACANT FULL POWER ALLOTMENTS LIMITED, APPLICATIONS WERE SUBJECT TO COMPARATIVE HEARING FREEZE
- FULL POWER TELEVISION: FIND UNDERSERVED MARKET NICHE
- FM RADIO: IDENTIFY AND TARGET ETHNIC/MINORITY COMMUNITIES

Irwin, Campbell & Tannenwald, P.C., June 24, 1998

FULL POWER TELEVISION INTERESTS

- PERMITS FOR 4 FULL POWER TV STATIONS:
  - KWKB(TV), IOWA CITY, IOWA
  - KCFG(TV), FLAGSTAFF, ARIZONA
  - KBEO(TV), JACKSON, WYOMING
  - KWKB(TV), SIERRA VISTA, ARIZONA - (HELD BY SIERRA TELEVISION, LLC)
- MRS. BAE HAS INTERESTS IN 3 OTHER TV STATION PERMITS
- UNIVERSAL SETTLEMENTS PENDING FOR INTERESTS IN 2 OTHER TV PERMITS
- 16 OTHER TV APPLICATIONS PENDING, OF WHICH KM EXPECTS ABOUT 9 TO BE RESOLVED BY FCC AUCTION

Irwin, Campbell & Tannenwald, P.C., June 24, 1998

FULL POWER FM RADIO INTERESTS

- PERMITS FOR 3 FULL POWER FM RADIO STATIONS:
  - WPNG(FM), PEARSON, GEORGIA
  - KWKM(FM), ST. JOHNS, ARIZONA
  - WMNW(FM), ATLANTA, ILLINOIS
- UNIVERSAL SETTLEMENT PENDING FOR 50% INTEREST IN ONE OTHER FM PERMIT
- 11 OTHER FM APPLICATIONS PENDING, OF WHICH KM EXPECTS ABOUT 8 TO BE RESOLVED BY FCC AUCTION

Irwin, Campbell & Tannenwald, P.C., June 24, 1998

BROADCAST AUCTION NPRM COMMENTS

- KM GENERALLY SUPPORTED AUCTIONS
- COMPARATIVE HEARINGS LIKELY WOULD CAUSE LONG DELAYS
- CRITERIA FOR COMPARATIVE HEARINGS WOULD BE SUBJECT TO COURT CHALLENGES, USED FOR FEW COMPARATIVE HEARINGS

Irwin, Campbell & Tannenwald, P.C., June 24, 1998

BROADCAST AUCTION NPRM COMMENTS

- WHERE 2 OR MORE MUTUALLY EXCLUSIVE APPLICATIONS ON FILE BEFORE 7/1/97, BUDGET ACT OF 1997 REQUIRES FCC TO TREAT THOSE APPLICANTS AS THE ONLY "ELIGIBLE BIDDERS"
- EVEN WHERE NO "CUT-OFF LIST" HAS BEEN ISSUED
- SUCH APPLICANTS MAY REACH UNIVERSAL SETTLEMENT DURING RECENTLY-CLOSED 180-DAY SETTLEMENT WINDOW

Irwin, Campbell & Tannenwald, P.C., June 24, 1998

BROADCAST AUCTION NPRM COMMENTS

- SETTLEMENT WAIVER PROVISIONS IN BUDGET ACT OF 1997 SHOULD BE INTERPRETED BROADLY BY THE FCC
- FCC SHOULD ACT ON PETITIONS TO DENY THAT WOULD MAKE SETTLEMENTS UNIVERSAL AND RESOLVE PROCEEDING
- THE FCC IS REQUIRED TO CONTINUE TO ACCEPT SETTLEMENTS THAT COMPLY WITH SECTION 73.3525
- SUCH SETTLEMENTS SHOULD BE PERMITTED UNTIL THE UPFRONT PAYMENT DEADLINE FOR THE RELEVANT AUCTION

Irwin, Campbell & Tannenwald, P.C., June 24, 1998

BROADCAST AUCTION NPRM COMMENTS

- HEARING AND APPLICATION FILING FEES SHOULD BE REFUNDED TO APPLICANTS THAT CHOOSE NOT TO BID AT AUCTION
- REFUNDS SHOULD BE MADE UPON DISMISSAL OF APPLICATIONS

Irwin, Campbell & Tannenwald, P.C., June 24, 1998

BROADCAST AUCTION NPRM COMMENTS

- CLOSED APPLICATION FILING WINDOWS SHOULD NOT BE REOPENED
- NO NEW PETITION TO DENY PERIOD FOR CUT-OFF APPLICATIONS
- MINIMUM OPENING BID OR RESERVE PRICE NOT IN PUBLIC INTEREST

Irwin, Campbell & Tannenwald, P.C., June 24, 1998

BROADCAST AUCTION NPRM COMMENTS

- SUPPORTS BIDDING CREDITS FOR MINORITY-OWNED AND WOMEN-OWNED BUSINESSES
- BUT RECOGNIZES CONSTITUTIONAL ISSUES INVOLVED
- OPPOSED 5 YEAR HOLDING PERIOD, PROPOSED 2-3 YEARS

Irwin, Campbell & Tannenwald, P.C., June 24, 1998

JEFFREY L. TIMMONS is an attorney at Irwin, Campbell & Tannenwald, P.C., where he represents mass media, common carrier and wireless telecommunications clients on matters before the Federal Communications Commission, including spectrum auctions. He is a graduate of Johns Hopkins University and the Catholic University of America Columbus School of Law. He formerly served as a law clerk in the Office of the Chairman of the FCC, for former Chairman Alfred C. Sikes. For over six years prior to law school, he held various positions in product line management, marketing technical support, engineering and construction at Bell Atlantic.

EXHIBIT 2

AFFIDAVIT

I, Myoung Hwa Bae, under penalty of perjury and pursuant to Section 1.16 of the Commission's Rules, 47 C.F.R. § 1.16, do hereby declare that:

1. I am President, Treasurer and sole director of KM Communications, Inc. ("KM"), the licensee since 1994 or before of four Low Power Television stations, and the permittee and/or an applicant for a number of new commercial full power television and FM radio stations.

2. I have reviewed the Opposition to which this Affidavit is attached as Exhibit 2, which was prepared in response to the Petition for Reconsideration filed by Bechtel & Cole, Chartered on October 13, 1998, in the broadcast auction proceeding, as well as all exhibits attached thereto (the "Opposition").

3. All facts and statements in the Opposition of which I have personal knowledge are true and correct, and all other facts and statements therein are true and correct to the best of my knowledge, information and belief.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief. Executed this 12 day of November, 1998.

Myoung Hwa Bae

EXHIBIT 3

KM Communications, Inc. ("KM") is 100% owned by Mrs. Myoung Hwa Bae ("Mrs. Bae"), who is also the President, Treasurer and sole director of KM. Since October 1994, KM has filed a total of 50 Form 301 applications for construction permits for new full power commercial television or FM radio stations, including 33 television applications and 17 FM radio applications. Exhibit 3A attached hereto lists all of the applications filed by KM, in chronological order, including the call sign (if KM's application has been granted and a call sign assigned), channel, community, FCC file number, estimated cost to construct and operate for 3 months from Section III of Form 301, and current status of the application.

In each application, as originally filed, Mrs. Bae as the 100% owner of KM is listed as the source of funds for the certification of KM's financial qualifications in Section III of Form 301. This Exhibit 3 demonstrates that Mrs. Bae, and therefore KM, had at the time of each such certification, and continues to have, sufficient net liquid assets to construct and operate all of the proposed stations for three months, based on KM's estimated costs as of the time the applications were filed, or as subsequently amended. Among other assets, Mrs. Bae and KM relied upon the value of certain real property, based on Mrs. Bae's ability to readily raise funds by selling such assets or obtaining loans using such assets as security, if necessary. Mrs. Bae also relied upon her other substantial personal resources in making her financial commitments to KM, including but not limited to her cash on hand and the value of certain liquid securities (some of which are described herein).[1]

Exhibit 3B attached hereto lists and describes several (but again, not all) of the real property assets upon which Mrs. Bae and KM relied for their financial certification, including descriptions of the real property, date of the appraisal or offer, appraiser or offerer, total appraised or offered value (where available) and estimated loan value. Since one appraiser estimated that a loan would be readily obtainable at 60% of the total value of one of the properties, Mrs. Bae and KM have assumed the same 60% loan-to-asset value ratio to determine the loan value for each of the properties. Mrs. Bae, based on her experience in banking[2] and in business generally, believes that the 60% ratio is a conservative but fair measure for these circumstances. Mrs. Bae and KM have retained documentation of the value for each of these real property assets in their files (and their counsel's files), and would submit copies of the

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[1] See, e.g., Port Huron Family Radio, Inc., 4 FCC Rcd 2532, 66 RR 2d 545 (Review Board 1989) (individuals with substantial personal income sources may certify financial qualifications).

[2] Among other business interests, Mrs. Bae was an original incorporator in 1989 of Foster Bank, and has been the Chairman of the Board of Directors since 1991; Mrs. Bae is also the largest single shareholder, with approximately one-third of the shares, and her immediate family owns approximately 59% of the shares, of the company. Foster Bank currently has over 100 employees at 4 locations and $170 million in assets, with approximately 75% of its deposits derived from the Asian-American community in the Chicago area.

documentation upon the Commission's request.

At the time each application was filed by KM and through the present date, each of the real property assets listed in Exhibit 3B was owned and continues to be owned by Mrs. Bae and her immediate family through a land trust,[3] free and clear of any loans, liens or other encumbrances of any nature. Accordingly, Mrs. Bae was permitted to rely upon these assets in making financial commitments to KM and for the financial certifications in Section III of the Form 301 applications filed by KM.[4]

As will be shown in more detail herein, KM's certification of available funds based on the estimated cost for all of the applications then pending before the FCC combined reached the highest point, of $17.08 million, with the filing of 2 FM radio applications on November 18, 1996.[5] **Even at that highest point, the estimated costs were well within the financial qualifications of Mrs. Bae and KM.** For example, just the four of the properties owned by Mrs. Bae listed in Exhibit 3B had an estimated total value in excess of $30 million, or approximately twice the estimated cost of constructing and operating all of the stations proposed in then-pending applications simultaneously. Alternately, the value of loans that could be readily obtained using just the four properties listed on Exhibit 3B as security is conservatively estimated at between $17 million to $19.5 million which, with the market value as of August 30, 1996 (within 90 days of the filing of the applications on November 18, 1996, as required by the Commission's rules) of a securities account maintained by Mrs. Bae with The Northern Trust Company ("Northern Trust") in excess of $2.35 million, also would be more than sufficient to demonstrate the requisite liquid funds necessary to simultaneously construct and operate all of the stations proposed in then-pending applications.

A more detailed timeline, presented as "snapshots" of Mrs. Bae's and therefore KM's financial qualifications as of the date financial certifications were made with the filing of certain

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[3] Mrs. Bae and her immediate family have purchased and own most of their real property assets through a land trust (the "Land Trust"), due to tax and other liability considerations. Mrs. Bae has the full legal right and ability (including the consent of her family, as may be necessary) to sell any of the real property held by the Land Trust, and to individually receive the proceeds of such sale, or to borrow funds using such real property as security for a loan to her individually, in order to provide the funds committed to KM.

[4] See, e.g., Cornwall Broadcasting Corp., 89 FCC 2d 704, 51 RR 2d 389 (Review Board 1982) (applicant may rely on a realty company's appraisal of the fair market value of real property assets, and upon assurance of a loan from the applicant's principal); Cannon's Point Broadcasting Co., 93 FCC 2d 643, 53 RR 2d 953 (Review Board 1983)(applicants may rely upon non-liquid assets greater in value than the funds which such assets are relied upon to yield).

[5] The FM radio applications for Clovis and Faribault. See Exhibit 3A at 4.

applications or groups of applications, follows. Mrs. Bae and KM are confident that a similar demonstration can be readily made with regards to the certification made with the filing of each application, as the Commission may care to select.

Prior to filing the first applications on October 21, 1994, and upon advice of counsel, Mrs. Bae and KM documented the appraised value of one of its real property assets, the Foster Bank Building,[6] which was appraised at $3.75 million; the appraiser also estimated that a loan for 60% of the appraised value of the asset, or $2.25 million, could be readily obtained. In addition, the market value as of September 30, 1994 (less than 30 days prior to the filing of the applications) of Mrs. Bae's securities account at Northern Trust was in excess of $4.2 million. KM's estimated cost for the first 3 applications combined, or $1.35 million,[7] was well within the financial qualifications of Mrs. Bae and KM based on the value of either her securities account or the Foster Bank Building alone (even without consideration of cash on hand or other assets of Mrs. Bae or KM).

After filing the initial three applications on October 21, 1994, but prior to filing additional applications on December 15, 1994 and thereafter, Mrs. Bae and KM documented that $8 million could readily be borrowed based on the value of and net operating income from another real property asset, the Radisson Lincolnwood Hotel. The total fair market value of just the Foster Bank Building and the Radisson Lincolnwood Hotel easily is in excess of $20 million, and Mrs. Bae had independent appraisals documenting that should could readily obtain loans on the order of $10.25 million, or approximately 50% of the total value of the real property, using just those two real property assets as security for the loan. Combined with the value of her Northern Trust securities account, Mrs. Bae was financially qualified to provide assurances to KM of the availability of funds in excess of $14 million, without considering any of her other assets. This documentation ensures that sufficient funds were available for the filing of KM's first 34 applications combined, as filed through September 19, 1996, with total estimated costs at a maximum of $13.215 million during this period.[8]

In September 1996, prior to filing additional applications in September and November 1996 and again upon advice of counsel, Mrs. Bae and KM documented the appraised value of

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[6] The Land Trust (described *supra* at n.3) owns 100% of the Foster Bank Building. In addition to the Foster Bank and other businesses owned and controlled by Mrs. Bae (including The Korean American Broadcasting Co., Inc., a video programming production business), the Land Trust also leases space in the Foster Bank Building to other businesses.

[7] The three applications were for new television stations in Syracuse, Sierra Vista, and Pendleton. See Exhibit 3A at 1.

[8] Specifically, through the filing of the application for a new television station in Omaha. See Exhibit 3A at 1-4.

another real property asset, the Chapel Hill Golf Course, which was appraised at a value of between $7 to $7.5 million. See Exhibit 3B at 2. The total fair market value of the Foster Bank Building, Radisson Lincolnwood Hotel and Chapel Hill Golf Course real property assets was approximately $30 million, and Mrs. Bae and KM reasonably estimated that funds on the order of $14.75 million (again, approximately 50% of the total value of the real property) could be obtained using just those three real property assets as security for a loan. The market value as of August 30, 1996 (within 90 days prior to the filing of the applications) of Mrs. Bae's securities account at Northern Trust was in excess of $2.35 million. Combined, Mrs. Bae was financially qualified to provide assurances to KM of the availability of $17.1 million in funds, without considering any of her other assets, as of KM's filing of 11 additional applications on September 30, 1996 and in November 1996, with total estimated costs at a maximum of $17.08 million during this period.[9]

Since a number of KM's applications had been dismissed, pursuant to settlements entered into during the Commission's 90 day settlement window in 1995, KM's total estimated costs and Mrs. Bae's related financial commitment began to decrease. KM's last 5 applications were all filed between March 28 and September 4, 1997. All of the real property assets upon which Mrs. Bae and KM relied for their financial certifications remained available to them during this period.

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[9] Specifically, through the filing of the applications for new FM radio stations in Clovis and Faribault. See Exhibit 3A at 4.

EXHIBIT 3A

Chronological List of KM Communications, Inc. Form 301 Applications

Following is a chronological list of all of the Form 301 applications for construction permits for new full power commercial television or FM radio stations filed by KM Communications, Inc. ("KM"), including the call sign (if KM's application has been granted and a call sign assigned), channel, community, FCC file number, estimated cost to construct and operate the proposed station for 3 months (from Section III, Question 2 of each Form 301), and current status of the application:

Applications (Channel, Community)	FCC File Number	Estimated Cost	Status of Application
1) TV Ch. 56, Syracuse NY	BPCT-941021KW	$450,000	Dismissed 4/21/97 (for settlement payment).
2) KWBA(TV), Ch. 58, Sierra Vista AZ	BPCT-941021KI	$450,000	Granted 11/22/96 (settlement).
3) TV Ch. 11, Pendleton OR	BPCT-941021KV	$450,000	Dismissed 2/20/97 (for settlement payment).
4) KWKB(TV), Ch. 20, Iowa City IA	BPCT-941215KG	$450,000	Granted 5/10/96 (settlement).
5) TV Ch. 14, Boise ID	BPCT-941215KF	$450,000	Still pending, to be resolved by FCC auction.[1/]
6) TV Ch. 20, Salt Lake City UT	BPCT-950109KE	$450,000	Dismissed 10/6/97 (for settlement payment).
7) TV Ch. 23, Ames IA	BPCT-950109KG	$450,000	Dismissed 2/19/98 (for settlement payment).
8) TV Ch. 51, Batavia NY	BPCT-950118KE	$450,000	Dismissed 5/10/96 (for settlement payment).
9) KBEO(TV), Jackson WY	BPCT-950317KF	$450,000	Granted 4/2/98 (settlement).
10) KCFG(TV), Ch. 9, Flagstaff AZ	BPCT-950317KN	$450,000	Granted 2/10/97 (settlement).
11) TV Ch. 14, Albuquerque NM	BPCT-950317KG	$450,000	Settlement pending for dismissal of KM application.

[1/] KM entered into a settlement agreement in December 1995 and agreed to pay $200,000 for the one competing applicant to dismiss its application; although the settlement agreement and joint request for approval remain pending before the FCC, KM notes that the competing applicant exercised its contractual right to terminate the settlement agreement and request dismissal of the joint request (after the FCC had not acted within 18 months, and Congress opened a new statutory 6 month settlement period under a provision of the Balanced Budget Act of 1997).

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Applications (Channel, Community)	FCC File Number	Estimated Cost	Status of Application
12) KAQS(TV), Ch. 30, Shawnee OK	BPCT-950331KE	$450,000[2/]	Dismissed 7/30/96 (merger settlement).
13) TV Ch. 36, Hutchinson KS	BPCT-950824KK	$450,000	Dismissed 4/2/97 (for settlement payment).
14) KWBT(TV), Ch. 19, Muskogee OK	BPCT-950901KJ	$450,000[3/]	Dismissed 8/27/98 (merger settlement).
15) WPNG(FM), Ch. 270A, Pearson GA	BPH-951108MK	$300,000	Granted 8/15/96 (singleton).
16) KWKM(FM), Ch. 239C, St. Johns AZ	BPH-951108MF	$300,000	Granted 4/17/98 (singleton).
17) FM Ch. 231A, Merced CA	BPH-951108MU	$300,000[4/]	Dismissed 11/4/98 (merger settlement).
18) FM Ch. 255A, Parkersburg IA	BPH-951108MQ	$300,000	Still pending, to be resolved by FCC auction.
19) FM Ch. 248A, Breese IL	BPH-951108MV	$300,000	Still pending, to be resolved by FCC auction.
20) FM Ch. 224A, Neillsville WI	BPH-951108MY	$300,000	Still pending, to be resolved by FCC auction.

[2/] Under an equal merger settlement a newly-formed entity, OKC-30 Television, L.L.C. ("OKC-30"), in which Mrs. Bae holds a 50% interest, was substituted as the applicant in the competing application's proposal (File No. BPCT-950814KE) under an amendment filed on June 18, 1996; due to a bank loan commitment, the obligation of Mrs. Bae to OKC-30 for the estimated cost became only $50,000 after the amendment, which was less than Mrs. Bae's $450,000 commitment to the estimated cost of KM's original proposal.

[3/] Under a merger settlement a newly-formed entity, Tulsa Channel 19, L.L.C. ("Tulsa"), in which Mrs. Bae holds a 33⅓% interest, was substituted as the applicant in a competing application's proposal (File No. BPCT-950901KJ) under an amendment filed on January 29, 1998; Mrs. Bae's obligation to Tulsa for the estimated cost was $800,000 after the amendment, which was more than Mrs. Bae's $450,000 commitment to the estimated cost of KM's original proposal. Mrs. Bae has already made a $50,000 capital contribution to Tulsa, to fund a $130,000 settlement payment to one dismissing competing applicant plus other initial organization costs.

[4/] Under a merger settlement a newly-formed entity, KZMS/KM Joint Venture ("KZMS/KM"), in which KM holds a 50% interest, was substituted as the applicant in a competing application's proposal (File No. BPH-951108MH) under an amendment filed on March 7, 1998; the obligation of KM to KZMS/KM for the estimated cost became only $150,000 after the amendment, which was less than Mrs. Bae's $300,000 commitment to the estimated cost of KM's original proposal. Mrs. Bae has already made a $87,500 capital contribution to KZMS/KM, to fund $150,000 in settlement payments to three dismissing competing applicants plus other initial organization costs.

EXHIBIT 3A

Applications (Channel, Community)	FCC File Number	Estimated Cost	Status of Application

EXHIBIT 3A

Applications (Channel, Community)	FCC File Number	Estimated Cost	Status of Application
21) WEPX(TV), Ch. 39, Greenville NC	BPCT-960404KK	$450,000[5]	Dismissed 10/21/97 (merger settlement).
22) TV Ch. 4, Crandon WI	BPCT-960404LJ	$450,000	Dismissed 9/25/98 (for settlement payment).
23) KBCZ(TV), Ch. 11, Holbrook AZ	BPCT-960404KE	$450,000[6]	Dismissed 1/23/98 (merger settlement).
24) TV Ch. 39, Newton IA	BPCT-9604058L	$605,000	Dismissed 8/20/96 (voluntary, at KM's request).
25) TV Ch. 62, Arcade NY	BPCT-960405XF	$705,000	Still pending, to be resolved by FCC auction.
26) TV Ch. 46, Gosnell AR	BPCT-960405___	$595,000	Still pending, to be resolved by FCC auction.
27) TV Ch. 32, Provo UT	BPCT-9604059L	$450,000	Still pending, to be resolved by FCC auction.
28) TV Ch. 34, Spokane WA	BPCT-960405XP	$410,000	Dismissed 4/2/98 (for settlement payment).
29) FM Ch. 264C, Brigham City UT	BPH-960507MR	$350,000	Still pending, to be resolved by FCC auction.
30) FM Ch. 225A, New Holstein WI	BPH-960507MU	$350,000	Still pending, to be resolved by FCC auction.
31) FM Ch. 245A, Willard OH	BPH-960507MD	$300,000	Dismissed 8/25/98 (for settlement payment).
32) WMNW(FM), Ch. 242A, Atlanta IL	BPH-960603MC	$300,000	Granted 4/16/98 (settlement).
33) FM Ch. 248C1, Mesquite NV	BPH-960822MD	$300,000	Dismissed 7/21/98 (for settlement payment).

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[5] Under an equal merger settlement a newly-formed entity, Channel 38, LLC ("Channel 38"), in which Mrs. Bae holds a 12.5% interest, was substituted as the applicant in a competing application's proposal (File No. BPCT-960405KK) under an amendment filed on April 16, 1997; due to financing from other sources, after the amendment Mrs. Bae has no financial obligation to Channel 38, as compared to Mrs. Bae's $450,000 commitment to the estimated cost of KM's original proposal.

[6] Under an equal merger settlement a newly-formed entity, Channel 11 Television, L.L.C. ("Channel 11"), in which Mrs. Bae holds a 20% interest, was substituted as the applicant in a competing application's proposal (File No. BPCT-960405LW) under an amendment filed on May 30, 1997; Mrs. Bae's obligation to Channel 11 for the estimated cost became only $50,000 after the amendment, which was less than Mrs. Bae's $450,000 commitment to the estimated cost of KM's original proposal.

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Applications (Channel, Community)	FCC File Number	Estimated Cost	Status of Application
34) TV Ch. 54, Omaha NE	BPCT-960919___	$300,000	Returned 10/7/96 by FCC.[7]
35) TV Ch. 9, Walla Walla WA	BPCT-960930KY	$450,000	Dismissed 9/2/98 (for settlement payment).
36) TV Ch. 26, Bismarck ND	BPCT-960930KW	$450,000	Dismissed 2/26/98 (for settlement payment).
37) TV Ch. 24, Minot ND	BPCT-960930KU	$450,000	Dismissed 2/23/98 (for settlement payment).
38) TV Ch. 51, Marianna FL	BPCT-960930KQ	$450,000[8]	Dismissed 9/1/98 (merger settlement).
39) TV Ch. 43, El Dorado AR	BPCT-960930KV	$450,000	Still pending, to be resolved by FCC auction.
40) TV Ch. 21, Roswell NM	BPCT-960930KT	$450,000	Still pending, to be resolved by FCC auction.
41) TV Ch. 51, Jackson MS	BPCT-960930LW	$450,000	Settlement pending for dismissal of KM application.
42) TV Ch. 21, Virginia Beach VA	BPCT-960930KX	$450,000	Still pending, to be resolved by FCC auction.
43) TV Ch. 29, Selma AL	BPCT-961113KE	$420,000	Dismissed 9/25/98 (for settlement payment).
44) FM Ch. 268C1, Clovis NM	BPH-961118M1	$350,000	Still pending, to be resolved by FCC auction.
45) FM Ch. 298C2, Faribault MN	BPH-961118MU	$350,000	Dismissed 4/16/98 (for settlement payment).
46) TV Ch. 15, Pocatello ID	BPCT-970328KK	$350,000	Still pending, to be resolved by FCC auction.

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[7] This allotment was subject to the FCC's freeze on applications in the top 30 markets, and KM's application did not include a request for waiver of the freeze. KM filed a petition for reconsideration and an amendment to include the waiver request on November 6, 1996, which remains pending.

[8] Under a merger settlement a newly-formed entity, Channel 51, L.C. ("Channel 51"), in which Mrs. Bae holds a 33⅓% interest, was substituted as the applicant in a competing application's proposal (File No. BPCT-960404LN) under an amendment filed on February 20, 1998; Mrs. Bae's obligation to Channel 51 for the estimated cost became only $120,000 after the amendment, which was less than Mrs. Bae's $450,000 commitment to the estimated costs of KM's original proposal. Mrs. Bae has already made a $30,000 capital contribution to Channel 51, to fund $75,000 in settlement payments to two dismissing competing applicants plus other initial organization costs.

EXHIBIT 3A

Applications (Channel, Community)	FCC File Number	Estimated Cost	Status of Application
47) FM Ch. 270C2, Agana Guam	BPH-970404MF	$350,000	Still pending, to be resolved by FCC auction.
48) FM Ch. 299B1, Fairbury IL	BPH-970404MC	$350,000	Still pending, to be resolved by FCC auction.
49) FM Ch. 246A, Two Rivers WI	BPH-970414ME	$350,000	Returned 5/12/97 by FCC.[2/]
50) FM Ch. 275A, Earlville IL	BPH-970904MC	$350,000	Still pending, to be resolved by FCC auction.

[2/] Due to an error by KM's counsel, this application was filed prior to the opening of a filing window for this allotment, and therefore was returned by the FCC as premature. However, since the application included a financial certification by KM, it has been included in this exhibit.

EXHIBIT 3B

List of Appraised Real Property for Form 301 Financial Certification

Following is a list describing several (but not all) of the real property assets upon which Mrs. Bae and KM Communications, Inc. ("KM") relied for their financial certifications in Section III of the Form 301 applications for construction permits for new full power commercial television and FM radio stations filed by KM, including a description of the real property, date of the appraisal or offer, appraiser or offerer, total appraised or offered value (where available), and estimated loan value. Mrs. Bae and KM have retained documentation of the value for each of these real property assets in their files (and their counsel's files), and would submit copies of the documentation upon the Commission's request. At the time each application was filed by KM and through the present date, each of the real property assets listed in this Exhibit 3B was owned and continues to be owned by Mrs. Bae and her immediate family through a land trust,[1/] free and clear of any loans, liens or other encumbrances of any nature (except as may be noted herein). Accordingly, Mrs. Bae was permitted to rely upon these assets in making financial commitments to KM and for the financial certifications in Section III of the Form 301 applications filed by KM.

Property	Appraisal or Offer Date	Appraiser/Offeror	Appraised or Offered Value	Estimated Loan Value	Notes
Foster Bank Building 5221 North Kedzie Avenue Chicago, Illinois	10/20/94	Prudential Realty	$3,750,000	$2,250,000	Appraiser estimated that a loan would be readily obtainable at 60% of the appraised value.
Radisson Lincolnwood Hotel 4500 West Touhy Avenue Lincolnwood, Illinois 60646	12/12/94	Baird & Warner	N/A	$8,000,000	Appraiser estimated loan value based on approximate 1995 net operating income and value of property.

1/ Mrs. Bae and her immediate family have purchased and own most of their real property assets through a land trust (the "Land Trust"), due to tax and other liability considerations. Mrs. Bae has the full legal right and ability (including the consent of her family, as may be necessary) to sell any of the real property held by the Land Trust, and to individually receive the proceeds of such sale, or to borrow funds using such real property as security for a loan to her individually, in order to provide the funds committed to KM.

EXHIBIT 3B

Property	Appraisal or Offer Date	Appraiser/Offeror	Appraised or Offered Value	Estimated Loan Value	Notes
Radisson Lincolnwood Hotel (continued)	9/3/97	Melvin M. Kaplan Realty, Inc.	$19,500,000	$11,700,000	Total value based on firm offer for a cash purchase of the property; loan value assumes same 60% loan/value ratio as above.
Chapel Hill Golf Course 2500 N. Chapel Hill Road McHenry, Illinois	9/29/96	Century 21/Care Real Estate, Inc.	$7,500,000	$4,500,000	Appraiser estimated fair market value based on comparable sales, as well as established course usage; loan value assumes same 60% loan/value ratio as above.
6410 Round Up Road (Residential Home adjacent to Chapel Hill Golf Course) McHenry, Illinois	10/21/98	Century 21/Care Real Estate, Inc.	$450,000	$270,000	Appraiser estimated fair market value; loan value assumes same 60% loan/value ratio as above.
Shopping Mall/Restaurant 7350 Lincoln Avenue Lincolnwood, Illinois	10/23/98	Prudential Realty	$1,300,000	$780,000	Appraiser provided preliminary analysis of the current market value, for sale within a 4 month time frame; loan value assumes same 60% loan/value ratio as above.

Exhibit 4
Section IV

Mes[illegible]ce Communications Company, Inc. proposes to broadcast news, r[illegible]ic affairs programs and public service announcements relat[illegible] to the issues of public concern facing the proposed serv[illegible] area.

EXHIBIT 2

CD Broadcasting, Inc. proposes to broadcast news, public affairs programs, and public service announcements relating to issues of public concern facing the proposed service area.

CERTIFICATE OF SERVICE

I, Tamara Craig, hereby certify that on this 12th day of November, 1998, copies of the foregoing "Opposition to Petition for Reconsideration" have been served by hand delivery or first-class United States mail, postage prepaid, upon the following:

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Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W., Room 802
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Commissioner Gloria Tristani
Federal Communications Commission
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