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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of Section 309(j)	)	MM Docket No. 97-234
of the Communications Act --	)	
Bidding for Commercial Broadcast	)	
and Instructional Television	)	
Service Licenses	)	
	)	
Reexamination of the Policy	)	GC Docket No. 92-52
Statement on Comparative	)	
Broadcast Hearings	)	
	)	
Proposals to Reform the	)	GEN Docket No. 90-264
Commission's Comparative Hearing	)	
Process to Expedite the	)	
Resolution of Cases	)	

To: The Commission

REPLY TO OPPOSITION TO  
PETITION FOR RECONSIDERATION

1. My petition for reconsideration filed October 13, 1998 raises certain policy questions. The opposition of KM Communications, Inc. ("KM") filed November 12, 1998 expresses contrary views on those questions, and I am content to leave the debate in that state for the agency's consideration. This reply is addressed to the unwarranted personal attack on me for filing the petition.

2. KM, at 4, is critical of filing this document as a communications attorney rather than as counsel for a client. Individuals including communications attorneys file documents in public rulemaking proceedings all the time, and are entitled to do so.

3. KM, at 4, is also critical of my failure to identify the client having a position of interest contrary to KM. While

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intending on my own motion to raise the policy questions, I felt it appropriate to disclose the existence of such a client so as not to mislead the Commission relative to where I was coming from. KM had no trouble discerning the identity of the client, on whose behalf I had earlier filed comments in this very proceeding and who has rejected a settlement overture by KM, referred to in its pleading at 16, n. 25.

4. KM, at 2-5, deals with the pleading as a "petition to deny" and is critical of failure to support the document by sworn declarations of persons having first-hand personal knowledge. That is a statutory term and, of course, the pleading is no such thing. It is a filing in a public rulemaking proceeding for which parties need not provide sworn testimony and in fact seldom do.

5. KM, at 18, relies on a statutory encouragement of settlement which was enacted after KM had filed all of its 50 applications and which facilitated an auction procedure for duly-qualified applicants without rescinding the long-standing statutory prohibition, not waivable by the Commission, against filing applications for the purpose of entering into settlements.

6. KM, at 6-12, claims there are factual inaccuracies in the petition, even though its own pleading corroborates the fundamental correctness of the premises on which the petition is based, i.e.:

(a) KM can be fairly charged with filing multiple applications for the purpose of settling many, if not the vast

majority, of them. In my petition, admittedly based upon incomplete records, the count was 30 television applications filed (excluding those dismissed for technical reasons) of which 9 applications (30% of the total) had already been settled before the Balanced Budget Act of 1997 encouraged settlements. One application, a singleton, had been granted, 0 contested applications had been prosecuted to a conclusion on the merits and 20 applications remained pending, with various future settlement opportunities still available during the auction process. In Exhibit 3A attached to KM's pleading, the count is 47 television and radio applications filed (again, excluding those dismissed for technical reasons) of which 28 have been or are being settled (60% of the total), 2 singletons have been granted, 0 contested applications have been prosecuted to a conclusion on the merits and 17 applications remain pending, with various future settlement opportunities remaining during the auction process. The clear case for an intent-to-settle-at-the-time-of-filing is both statistical and one of normal, rational human behavior under the all of the circumstances.

(b) KM's certification of available funds to build and commence operation of the television and radio stations for which it filed so many applications requires examination. My guesstimate was that the total real-world cost to construct and commence operation of some 30 television stations (plus some 15 radio stations) would be in the range of \$50-100 million. KM claims a cost of only \$17 million but can do so only by building

and commencing operation of full service television stations for \$450,000 apiece, or even less, a cost seemingly more akin to decades long since past than to the 21st Century.

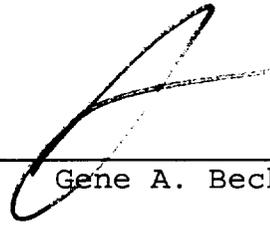
(c) With regard to the argument that settlement moneys paid to KM permit it to play the game with the house's money, KM's pleading, at 19, n. 30, acknowledges it has been bought out from a number of television situations where the payment dollars are greater than in radio. KM, at 16, n. 25, also alludes to its bidding strength against small town radio broadcasters. However, amidst a pleading selectively offering many factual details, KM provides no information concerning its net gain or loss to date from participation in the application filing-settling process.

7. Commission precedent cited by KM, at 21-22, are inapposite. Better T.V. Inc. of Dutchess County, New York, 16 RR2d 972 (¶¶10-11) (1969) was a hearing proceeding in which the Commission admonished counsel for filing a plethora of unauthorized pleadings. Television Broadcasters, Inc., 6 RR2d 293 (1965) was a hearing proceeding involving contested claims about program interviews of community leaders in which the Commission admonished counsel for both sides for making strong charges and countercharges that were not supported by the interview documents in their possession; moreover, those documents were not provided to the Commission until they surfaced when the parties submitted a proposal to settle their differences.

8. With all due respect to KM and its esteemed counsel, I

have raised legitimate policy questions in a public rulemaking proceeding based upon reasonable factual analyses and assumptions for which there is significant corroboration in KM's own pleading.

Respectfully submitted



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Gene A. Bechtel

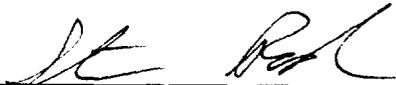
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November 23, 1998

CERTIFICATE OF SERVICE

I, Stephen M. Rodin, a legal assistant in the law firm of Bechtel & Cole, Chartered, do hereby certify that I have on the 23rd day of November, 1998, caused the foregoing "REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION" to be mailed by First Class U.S. Mail to the following party:

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Stephen M. Rodin