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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes	)	MM Docket No. 98-43
	)	
Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities	)	MM Docket No. 94-149
	)	

NATIONAL ASSOCIATION OF BROADCASTERS
PETITION FOR PARTIAL RECONSIDERATION

Pursuant to § 1.429 of the Commission's rules, the National Association of Broadcasters ("NAB")[1] requests that the Commission reconsider portions of its "Non-Technical" Streamlining *Report and Order.*[2] The *Report and Order,* released November 25, 1998, made fundamental changes to the procedures that govern broadcast licensing. Although many of these regulatory changes have merit, NAB believes the Commission must make certain other changes to its revised regulatory scheme.

I. INTRODUCTION

NAB appreciates the Commission's intent to provide additional efficiencies to the application process and procedures for broadcast stations. However, there are some

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[1] NAB is a non-profit, incorporated trade association that serves and represents U.S. radio and television stations and networks.

[2] *Report and Order* in MM Docket 98-43 and MM Docket No. 94-149, ___ FCC Rcd. ___ (November 25, 1998) [hereinafter "*Report and Order*"].

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issues that must be reconsidered. Specifically, NAB requests that the FCC reconsider its decision to exclude local zoning board and local land use permitting decision delays from the "encumbrances" to construction of a new or modified station that may "toll" the new, extended construction permit period. Failure to consider local government land use approval problems is contrary to the evidence presented to the Commission, both in this proceeding and other pending proceedings.

NAB also requests that the Commission reconsider its decision to modify the Ownership Report (Form 323) to require licensees to provide the race and gender of officers and directors and every individual with an attributable interest in the station.[3] NAB questions the FCC's authority to ask for such information when adequate information may be available through other means.

II. CONSTRUCTION PERMIT TOLLING ENCUMBRANCES

In its *Notice of Proposed Rule Making*, the Commission requested comment on a proposal to extend the construction permit period for all new or modified broadcast station applications to three years.[4] The *NPRM* proposed modifying the extension procedures to allow only two situations to "toll" the period – either an "Act of God" or an administrative or judicial review.[5] The Commission proposed to eliminate local zoning

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[3] On January 8, 1999, the Commission released the revised Form 323 that includes the race and gender inquiries. *See FCC Public Notice*, released January 8, 1999.

[4] *Notice of Proposed Rule Making* in MM Docket No. 98-43, ___ FCC Rcd ____, at ¶¶ 61 – 63 (1998) [hereinafter "*NPRM*"].

[5] *NPRM* at ¶ 64.

board decision delays as a reason to "toll" the construction period under the new proposed procedure.[6]

Despite the comments presented by NAB and many others on this issue, the Commission decided in its *Report and Order* only to allow tolling for the two proposed circumstances – either the occurrence of an "Act of God" or judicial or administrative review.[7] It reasoned that three years should be enough time for broadcasters to gain the proper approval from any local zoning authorities to build or modify their stations. NAB respectfully disagrees with this premise and asks that the Commission reconsider its decision. Reality paints a different picture of the local land use approval process and dynamics than the one perceived by the FCC in its *Report and Order.*

Zoning approval delays, and other local business-related difficulties, are "real world" encumbrances that are beyond the control of a permittee and that cannot be ignored by the Commission. In NAB's comments, we pointed the Commission to the established record in MM Docket No. 97-182,[8] where NAB provided numerous examples of situations where broadcasters have been stalled and prevented from building or modifying facilities due to local zoning board delays.[9] In many of these cases, it took more than three years to resolve the local zoning issues. The record in MM Docket No. 97-182 completely contradicts the Commission's conclusion that "the three-year

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[6] *NPRM* at ¶ 65.

[7] *Report and Order* at ¶ 83.

[8] *See Notice of Proposed Rule Making* in MM Docket No. 97-182, ___ FCC Rcd ___ (1997).

[9] Comments of the National Association of Broadcasters in MM Docket No. 98-43, filed June 16, 1998, at 18.

construction period provides ample time to complete this process and construct the station or choose a new site free from zoning difficulties."[10]

In the *Notice of Proposed Rule Making* in MM Docket No. 97-182, *supra*, the Commission proposed a rule that would place strict time limits on local government review and decision on broadcast requests for land use approval. The *Notice's* proposed rule was premised on evidence that such limits were needed to ensure the prompt and orderly inauguration and improvement of services authorized by the Commission.

The same evidence that led the Commission to proposed such time limits apply equally to the instant proceeding dealing with construction permit extensions. By failing to rule that local zoning and other land use/permitting approval delays should toll the CP time clock, the FCC simply empowers local authorities to "wait out" local broadcasters and gain a final, federal approval denial in lieu of local action. Such a result would be in total contradiction to rational communications policy and to the records established in the instant rule making and the one developed in MM Docket No. 97-182. Clearly, the regulatory choice made by the Commission on this aspect of its non-technical *Report and Order* simply relegates the FCC's authority and responsibilities to regulate over-the-air broadcasting to possible whim and intransigence of local authorities.

Further, the Commission admits that the majority of the commenters disagreed with the Commission's conclusion in the Non-Technical Streamlining *NPRM* that local zoning authorization processes should be eliminated as a valid reason for an extension or tolling of a construction period.[11] The decision to eliminate zoning board delays as an

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[10] *Report and Order* at ¶ 86.

[11] *Id.* at ¶ 82.

"encumbrance" was made without addressing any of the "real world" instances and ignoring the comments and evidence presented in the proceeding. The Commission must provide broadcasters with that additional avenue to toll the construction period by recognizing local zoning approval delays as an "encumbrance" to construction or modification.

This decision also is contrary to the stated position regarding the procedures for the build out of DTV stations. In the Digital Television *Fifth Report and Order*, the Commission recognized the issue and provided that stations will be granted extensions to build their new DTV station if problems arise during the local zoning process.[12] The Commission reiterated its support of such an extension in its reconsideration of the *Fifth Report and Order*.[13]

Clearly, the approach taken by the Commission in granting extensions for construction permits in the DTV arena is much different than the decision reached in this proceeding. However, the Commission's goals are still the same whether it is the construction or modification of a DTV station or other broadcast facility. The Commission must recognize that if an applicant cannot build because local zoning board approval is pending – even when the applicant is diligently pursuing a resolution to the problem – it is still beyond the control of the permittee and the construction period clock should be stopped from ticking.

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[12] *Fifth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 12809 at ¶ 77 (1997).

[13] *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order* in MM Docket No. 87-268, 13 FCC Rcd 6860 at ¶ 56. (1998).

III. THE REVISED OWNERSHIP REPORT FORM

In the *Report and Order*, the Commission streamlined the reporting period requirements for the Ownership Report (Form 323) to a biennial period instead of annual.[14] NAB supports that decision which will eliminate paperwork that burdens licensees and the FCC for no public benefit. However, it added a new requirement to identify the race and gender of all individual owners with an attributable interest in the station.[15] This new information collection was first proposed almost three years ago in MM Docket No. 94-149.[16] At that time, the Commission proposed collection of the data to monitor the progress of the proposed initiatives in that *Notice* that were designed to increase minority and female ownership of broadcast stations.[17] NAB questions the FCC's authority to require the collection of this information when there are adequate surveys available from other government agencies. The Commission believes that it will be able to monitor the status of minority and female ownership in order to provide further opportunities for minorities and women in broadcasting.[18]

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[14] *Report and Order* at ¶ 94.

[15] *Id.* at ¶ 100.

[16] *Notice of Proposed Rule Making* in MM Docket No. 94-149, ___ FCC Rcd ___ (1994).

[17] *Id.* at ¶ 39.

[18] *Report and Order* at ¶ 101.

The Commission's decision to require such information is a significant burden on broadcasters, not to mention the intrusive nature of the information collection.[19] The burden clearly outweighs the benefits because the National Telecommunications and Information Administration ("NTIA") has collected data on minority ownership of commercial broadcast stations since 1990.[20] NAB believes the NTIA reports are comprehensive enough to show the trends of minority commercial broadcast ownership – which is the stated goal of the Commission.[21] Although the FCC stated that NTIA's data collection efforts are inadequate, it did not specify precisely how NTIA's data is not sufficient to achieve the Commission's regulatory purposes. In fact, both the Commission and NTIA already rely on the data contained in the reports.[22] There is no need for this redundant information collection by two federal government entities. NAB requests that the Commission reconsider its decision to require this additional information collection.

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[19] The Commission notes that the modified reporting requirement is not burdensome because licensees are not "required to obtain information from anyone whose interests are not already reportable." *Report and Order* at ¶ 100. While their interests may already be reportable, clearly the race and gender of those individuals has not been reportable.

[20] *See Remarks of Larry Irving before the 38th Annual Conference of the Broadcast Cable Financial Management Association*, May 19, 1998.

[21] *Report and Order* at ¶ 101.

[22] *See Third Memorandum Opinion and Order and Further Notice of Proposed Rule Making* in PP Docket No. 93-253, 10 FCC Rcd 175 at ¶ 70 (1994); *Fifth Report and Order* in PP Docket No. 93-253, 9 FCC Rcd 5532 at ¶ 107 (1994); *Remarks of Larry Irving before the 38th Annual Conference of the Broadcast Cable Financial Management Association*, May 19, 1998; *Remarks of Larry Irving at the National Association of Black Owned Broadcasters' Annual Meeting*, September 11, 1997.

IV. CONCLUSION

For the reasons stated above, NAB respectfully requests that the Commission reconsider portions of its "Non-Technical" Streamlining *Report and Order*.

Respectfully Submitted,

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