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May 5, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Ms. Magalie Salas
Secretary
Federal Communications Commission
Portals II - 12th Street Lobby
Filing Counter - **TW-A325**
445 - 12th Street, S.W.
Washington, DC 20554

Re: MM Docket No. 97-234
GC Docket No. 92-52
GEN Docket No. 90-264
Motion for Stay Pendente Lite

Dear Ms. Salas:

Transmitted herewith, on behalf of Orion Communications Limited, is an original and fourteen (14) copies of its Motion for Stay Pendente Lite in the above-referenced rule making proceeding. Please contact the undersigned in the event the Commission has any questions with respect to this motion.

Sincerely,

Lee J. Peltzman
Counsel for
ORION COMMUNICATIONS LIMITED

Enclosure

No. of Copies rec'd 0+14
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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 309(j) of the Communications Act- Competitive Bidding for Commercial Broadcast Instructional Television Fixed Services	)	MM Docket 97-234
	)	
Reexamination of the Policy Statement on Comparative Broadcast Hearings	)	GC Docket 92-52
	)	
Proposals to Reform the Commission's Comparative Hearing Process to Expedite The Resolution Of Cases	)	GEN Docket 90-264

To: The Commission

ORION COMMUNICATIONS, LTD.'S MOTION FOR STAY PENDENTE LITE

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May 5, 1999

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DECLARATION OF CHERA L. SAYERS

DECLARATION OF BETTY LEE

Before The
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To: The Commission

ORION COMMUNICATIONS, LTD.'S MOTION FOR STAY PENDENTE LITE

Orion Communications Limited ("Orion"), applicant for a new FM radio broadcast station in Biltmore Forest, North Carolina, by counsel, requests the full Commission for a limited stay of its First Report and Order, released August 18, 1978, 13 FCC Rcd 15920 (1998), and its Order on Reconsideration, FCC 99-74, released April 20, 1999. The Commission stated its intention to auction the less than ten comparative broadcast frequencies in which at least an initial decision had been issued by June 30, 1997. A stay of the auction of the Biltmore Forest, N.C. frequency (and

the others similarly situated) is requested pending judicial review by the United States Court of Appeals for the District of Columbia Circuit in Orion Communications, Ltd., et al v. FCC, No. 98-1424 (D.C. Cir., filed Sept. 15, 1998). Absent that stay, Orion will suffer clear irreparable injury.

In light of limited time constraints, the Commission's announcement of its intent to proceed to auctions promptly, and the nature of its irreparable injury, Orion requests Commission action within 14 days.

SUMMARY OF ARGUMENT

The FCC's Order violated the Administrative Procedure Act (5 U.S.C. § 706 et seq.)("APA") in several material respects:

1. The FCC arbitrarily displaced a comparative hearing mechanism, on which Orion and its cohorts[1] relied when they tried their cases. The Commission failed to consider relevant factors and ignored pertinent comments. For example, Orion stated the FCC's professed concerns with further delay in adjudicating fully-tried initial

[1] These include co-Petitioners William E. Benns, III (U.S.Ct.App. Docket 98-1434), Susan M. Bechtel (U.S.Ct.App. Docket 98-1444), Lindsay Television, Inc.(U.S.Ct.App. Docket 98-1445) and Jerome Thomas Lamprecht (U.S.Ct.App. Docket 98-1528).

licensing cases was incongruous. The FCC has never addressed Orion's comment to adopt some or all comparative criteria surviving Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993) and resolve these few remaining cases under a strictly-defined timetable, using supplemental briefs based on the existing hearing records.

2. Because the rule reverses sixty years precedent, it must be given a "hard look." The FCC says it would be too difficult and time-consuming to develop comparative hearing rules for the few remaining initial licensing cases, which rules would be of limited future application. The rulemaking record belies this. Moreover the record fails to compare how long it would take to resolve Orion's and its sisters' cases under a comparative versus an auction method. Also, the FCC's theory that new rules would have "limited future utility" is a red herring; the FCC could use other, existing comparative rules. It is unfair to slight Congress' mandate to consider all the implications and then tell people to abandon their entire investments unless they have millions more to buy a frequency.

3. The Commission's Order, including its Regulatory Flexibility Act (5 U.S.C. § 603 et seq.)("RFA") Statement ("RFS"), relies on fallacious economic assumptions. What's more, the RFS doesn't legitimately estimate the economic burden on small, family-run businesses such as Orion and its sister petitioners. That was a prime purpose animating the RFA. Here the FCC has created a new rule of first impression which reverses settled practice and curtails Orion's and its colleagues' financial investments. The new rule clearly has secondarily retroactive implications. It dramatically impacts Orion's prior financial investment, which exceeds $500,000. No statutory interests are at stake; the FCC has the discretion to adopt reasoned comparative rules for cases such as Orion's. Instead of doing its job, the FCC wants to force Orion and the other similarly-situated petitioners to bear the entire costs of its bureaucratic procrastination.

Turning to the merits, Orion faces irreparable injury. Orion is presently broadcasting under interim

authorization.[2] But it cannot afford to participate in an auction and perforce would lose its business.[3]

In addition Orion and those applicants who are not broadcasting, such as Benns, Bechtel, Lindsay, and Lamprecht, will lose their entire investments expended through the comparative hearing process over the past decade. Neither the law nor FCC Orders provide redress to recoup these investments. This irreparable injury leaves those who tried their comparative cases to conclusion with no adequate remedy at law.

A stay will not materially impact any other party. Anyone who participated in comparative hearings and now wants an auction will not suffer overriding injury by maintaining the status quo pending review. Nor will the FCC be harmed by a stay.

A stay will advance the public interest. It will require the FCC to await judicial review of a decision affecting a small segment of cases caught up in a bureaucratic morass caused by the FCC's unwillingness to make decisions. There is no principled need to auction off

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[2] Orion Communications, Ltd. v. F.C.C., 131 F.3d 176 (D.C.Cir. 1997), cert. den'd, 119 U.S. 62 (1998).

[3] B. Lee Dec., ¶ 4.

the few frequencies at issue until judicial review is complete.

FACTUAL BACKGROUND

Since 1986, Orion has litigated before the FCC and this Court the permanent license to construct, own and operate a new FM radio broadcast station in Biltmore Forest, North Carolina.

The Balanced Budget Act of 1997[4] was enacted while Orion's prior direct appeal was before the Court. The new law requires competing applications for commercial broadcasting stations to be resolved through competitive bidding. An exception was made for those applications pending on June 30, 1997. The FCC has discretion to resolve such cases by comparative hearings or an auction mechanism, open only to parties to the pending proceedings.[5]

The FCC sought comments concerning, inter alia, whether fewer than ten long-standing cases[6], for which an initial decision had issued by June 30, 19977, should be differentiated from about 120 cases also then pending, which had never been designated for hearing.[7] Orion's is

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[4] P.L. 105-33, 111 Stat. 251 (1997).

[5] 47 U.S.C. § 309(j)-(l).

[6] Order, 13 FCC Rcd at 15933 n.31.

[7] Id.

one of the few fully-tried cases. By our reckoning, there are now about six such cases: we know of Biltmore Forest, North Carolina; Selbyville, Maryland; Middletown, Maryland; Charlottesville, Virginia; and Goodlettsville, Tennessee.

The FCC has adopted an auction mechanism for all pending cases, even those for which the hearing record was long ago resolved. It has also stated it intends to commence auctions promptly.

A. THE STANDARDS GOVERNING STAY APPLICATIONS.

Under the traditional test of Virginia Petroleum Jobber's Association v. FPC, 259 F.2d 921 (D.C. Cir. 1958) ("Virginia Jobbers"), an administrative order should be stayed if petitioner shows (1) a strong likelihood of prevailing; (2) it will suffer irreparable harm absent a stay; (3) other interested parties will not suffer substantial harm; and (4) the public interest will not be disserved.[8]

Washington Metropolitan Area Transit System v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977) ("WMATA"), refined the Virginia Jobbers standard. Under WMATA, when a stay applicant shows irreparable injury, a reasonable

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[8] See also Wisc. Gas Co. v. F.E.R.C., 758 F.2d 669, 673-74 (D.C.Cir. 1985); Found'n on Economic Trends v. Heckler, 756 F.2d 143, 151 (D.C. Cir. 1985).

balance of hardships, and lack of harm to the public interest, it need only show "questions going to the merits so serious, substantial, difficult, and doubtful, as to make them a fair ground for litigation and for more deliberative investigation."[9] Relief may be granted "with either a high probability of success and some injury, or vice versa."[10]

B. ORION MEETS THE STANDARDS FOR A STAY.

Orion satisfies both Virginia Jobbers and WMATA.

1. Orion Faces Irreparable Injury.

Unless Orion has enough money to buy a license, which Orion does not, it cannot seriously participate in the auction.[11] Its business and capital investment perforce will be destroyed. This constitutes irreparable injury.[12]

Orion also is irreparably injured and lacks an adequate remedy at law[13] because the substantial sums it invested pursuing its license through the comparative hearing process over the past decade (well over

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9 WMATA, 559 F.2d at 844.

10 Cuomo v. U.S.N.R.C., 772 F.2d 972, 974 (D.C. Cir. 1985).

11 B. Lee Dec., ¶¶ 3-4.

12 WMATA, 559 F.2d at 843 & n.2.

13 WMATA, 559 F.2d at 843 n.2 (comparing Virginia Jobbers, 259 F.2d at 925).

$500,000.00, per Ms. Lee's accompanying Declaration) cannot be recovered under the new rule or any statutory scheme.[14]

2. Orion's Strong Likelihood Of Success.

The FCC's delay enmeshed Orion and other petitioners in a quagmire. Orion and others suggested the FCC use existing comparative rules surviving Bechtel, allow supplemental briefs on the existing hearing records, and decide cases within narrow time periods.[15]

Instead the FCC placed the onus entirely on the applicants. It implied they should bear responsibility for their good faith participation in comparative hearings.

To be sure, the FCC predicted auctions will be a speedy way to end the problem. This overlooked the FCC's role creating the problem and never addressed the obvious: the Commission itself could complete the few remaining tried cases on a narrowly-defined timetable. Moreover, the FCC cannot seriously predict auctions would take less time to complete the few fully tried comparative cases. Under the new rules, unsuccessful bidders can contest the winner's basic qualifications and character. Thus for

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[14] Sanchez-Espinosa v. Reagan, 770 F.2d 202, 208-10 (D.C.Cir. 1985).

[15] Orion Cmts at pp. 5-6 & Ex. 1 (suggesting criteria; urging decisions within 70 days; Bechtel Cmts at p. 9 (suggesting use of existing rules and hearing record); Lindsay Television Cmts at p. 11 (same).

proceedings with full hearing records - such as Orion's case -- the record couldn't indicate whether, let alone how much sooner, auctions would be completed than if the FCC used existing comparative criteria and/or requested Orion to state why they considered themselves superior to their cohorts.

(a) A "Hard Look" Undercuts The FCC's Claims.

The FCC's theme that it would be "too difficult" to develop comparative rules is an administrative *ipse dixit*. Citing "difficulty" is no excuse: Commissioners get paid to resolve complicated issues!

Bechtel was issued because the "'quantitative' portion of the [FCC's former] integration credit tend[ed] to swamp the qualitative."[16] Bechtel did not direct the FCC to ignore other sensible factors that help determine applicants' qualifications, such as broadcast experience.

(b) The Commission's Disparate Treatment.

The FCC's position is further undercut by its uneven treatment of Orion's and its sisters' cases versus its treatment of pending broadcast renewal application cases.

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[16] Bechtel, 10 F.3d at 882.

In the few remaining comparative license renewal cases, licensees and challengers need only present, within the confines of existing "generally-phrased standard comparative issues," those factors deemed appropriate.[17] Here, there are only a few affected cases, as well. Indeed the fact that the FCC is following such a course in license renewal proceedings undercuts its claim that it would need to develop new rules for the several remaining initial licensing cases.

(c) The Commission's Misplaced Legal Analysis.

To justify retroactively abrogating Orion's reliance interests, the FCC has averred to Maxcell Telecom Plus v. FCC, 815 F.2d 1551 (D.C. Cir. 1987), which allowed it to convert from a comparative hearing to a lottery scheme for cellular radiotelephone licenses.[18] But, in Maxcell, the statutory scheme predating the applications already authorized lotteries. And the litigants never incurred the substantial investment of comparative hearings.[19]

Here the FCC's approach puts the cart before the horse. Its rule is one of first impression and abruptly changes six decades' practice. Orion litigated in good

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[17] Order, 13 FCC Rcd at 16005-06.

[18] Order, 13 FCC Rcd at 15937.

[19] Maxcell Telecom Plus v. FCC, 815 F.2d at 1554.

faith under the old rules. To win a license now means an investment of millions more dollars and losing everything - over $500,000 spent previously in good faith in litigating the comparative hearings. Moreover the new law expected the FCC to use informed discretion in addressing pre-July 1 cases. No amount of window dressing can obfuscate the truth: the FCC overlooked or gave the merest of lip service to obvious equitable considerations. See Clark-Cowlitz Joint Operating Agency v. F.E.R.C., 826 F.2d 1074 (D.C. Cir. 1987).

(d) The FCC's Economic Analyses Are Flawed.

The Regulatory Flexibility Statement ("RFS") and Order are riddled with "foolish notion[s] that should not be entertained by anyone who has had even a single undergraduate course in economics."[20]

For example, nowhere has the FCC assessed the impact on small firms which, after spending hundreds of thousands of dollars over many years, must now spend far more to buy a license -- if they can afford to - and write off prior expenditures.[21]

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[20] Fresno Mobile Radio v. FCC, 165 F.3d 965, 969 (D.C.Cir. 1999)(granting petition for review)(flawed order).

[21] See generally Sayers Dec., ¶ 4.

To be sure, the FCC says auctions will confer licenses on those who "value them the most."[22] No empirical evidence shows any Petitioner could bid today, based on its value of the license, the sum it could have bid before committing its resources in comparative proceedings. A more plausible theory would hold the party who previously *valued* the license the most may well have already committed the most capital litigating through comparative hearings. A party that initially valued the license the least, figuring it had little chance of prevailing, and, hence, spent the least, might now be able to bid the most. But that doesn't necessarily mean the latter "values the license the most."[23]

The FCC's belief the "the amounts bid for the licenses . . . will reflect the significant amounts already expended by all qualified bidders"[24] ignores the fact that people make decisions on the basis of marginal benefit versus marginal costs, ignoring sunk costs.[25] Thus, the FCC has it wrong. Assuming an applicant can afford to make a competitive bid, the auction participants' current bids

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22 Order , 13 FCC Rcd at 15936.

23 Sayers Dec., ¶ 4.

24 Order, 13 FCC Rcd at 15936.

25 Fresno Mobile Radio v. FCC, 165 F.3d at 969 (citations omitted).

will be based on expected future returns, given their current budget constraints.[26]

Also worthy of comment is the fact that changing the rules governing license distribution midway through the qualification process yields an inferior outcome as compared to the outcome obtained if the rules are not changed. By choosing an auction method at this late date, additional costs will be heaped onto those applicants such as Orion who fully litigated in good faith.[27]

Finally the RFS ventures into irrelevancies. For instance, the FCC asserts its administrative law judges would take "many years" to adjudicate the 120 pending proceedings.[28] We are speaking of only a handful of cases. Since these cases have already been through hearing, the Commission, itself, could decide these few cases promptly on the existing hearing records, following supplemental briefing under a narrowly defined timetable.

3. Balancing of Hardships.

A stay would not substantially harm other applicants, and surely not to the extent Orion is harmed. The FCC will

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[26] Sayers Dec., ¶ 6.

[27] Sayers Dec., ¶¶ 7-8.

[28] Order, 13 FCC Rcd at 16025 (Appendix B).

not be harmed after all its procrastination by awaiting this Court's views of its behavior.

4. Public Interest Considerations.

Requiring the FCC to obey the APA can only advance the public interest.

CONCLUSION

The FCC should stay pending judicial review the auctions of those litigated comparative hearing cases in which at least an initial decision was issued on June 30, 1997. Given the limited time before auctions will occur and the nature of its irreparable injury, Orion requests Commission action within 14 days.

Respectfully submitted,

ORION COMMUNICATIONS LIMITED

By: _____

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To: The Commission

DECLARATION OF CHERA L. SAYERS ACCOMPANYING ORION COMMUNICATIONS, LTD.'S MOTION FOR STAY PENDENTE LITE

CHERA L. SAYERS, whose vita is attached as Exhibit 1, declares as follows:

1. I have reviewed both the underlying FCC Order[1] and its Order on Reconsideration.[2] It is my understanding that under the comparative hearing system, significant legal fees and costs were incurred by those parties such as Orion, which litigated their particular cases to a conclusion at the administrative level.

[1] First Report and Order, 13 FCC Rcd 15920 (1998) ("FCC Order").

[2] FCC Order on Reconsideration, FCC 99-74, released April 20, 1999.

Additional fees and costs would have been incurred for matters taken to the United States Court of Appeals.

2. It is not my purpose to debate the degree of inherent fairness of the switch to an overall auction system for future license distribution, particularly where the parties incurred no or minimal investment costs. That is a policy choice best made by Congress.[3] But it is my opinion as an economist that the FCC's decision to require Orion and similarly-situated applicants who tried their administrative cases to conclusion to shift gears and participate in a closed auction mechanism, is based on fallacious economic assumptions. The FCC's choice of the closed auction mechanism ignores and does not compensate Orion and its cohorts for their investment costs already incurred. Indeed, as I will discuss below, the closed auction format tends to produce inefficient outcomes.

A. The FCC Order Ignores The Concept Of Limited Resources.

3. The FCC Order ignores the fundamental economic concept of limited resources and the various economic agents' budget

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[3] See R.H.Coase, "The Federal Communications Commission," Journal of Law and Economics, 2, 1-40 (1959), J. McMillan, John "Selling Spectrum Rights," Journal of Economic Perspectives, 8, 145-162 (1994), and P. Milgrom, "Auctions and Bidding: A Primer," Journal of Economic Perspectives, 3, 3-22 (1989).

constraints.[4] If an applicant had a fixed amount of financial capital to spend on a license, say $X, and already allocated a significant portion of $X under the hearing system, this applicant would only have a smaller amount of capital with which to participate in an auction. From an economic standpoint, Orion's or any similarly-situated applicant's competitors could gain an edge in the closed auction by simply providing a bid which exceeds by one dollar the highest bid Orion or any similarly-situated applicant now is able to offer.

B. The FCC Order Also Confuses The Concept Of Resource Allocation.

4. The FCC also claims (¶ 40) one strength of the auction system is that it supposedly assigns frequencies to "the eligible party that values it the most." This claim confuses the concept of economic resource allocation. In the pricing system, resources are generally allocated to economic agents according to willingness to pay.[5] In particular, resources go to the parties who are willing to pay the greatest amount for them. In an auction system, however, resources are allocated to the highest bidder. Quoting Nobel laureate Ronald H. Coase, "[t]he same

[4] See, for example P.A. Samuelson and W. D. Nordhaus, Economics, 4-5, 9-15, (16th ed.1998) and W.J. Baumol, A.S. Blinder: Economics: Principles and Policy, 50-52, (7th ed.1998).

[5] See R.H. Coase, "The Federal Communications Commission," *Journal of Law and Economics*, 2, 19, (1959).

system which enables someone with $1 million to obtain $1 million's worth of resources enables someone with $1,000 to obtain $1,000 worth of resources."[6] As applied to this case, one can certainly hypothesize a case where a small business such as Orion put a high *value* on a frequency in a moral sense, and now is unable to offer the high bid. For instance, I understand Ms. Lee, one of Orion's principals, has averred it incurred over $500,000.00 over years of litigation through a comparative system. Hence Orion may very well value this frequency more than its competitors, none of which have disclosed their obligations. Absent word from one or more competitors showing a higher sum, Orion's actions indicate it valued the frequency the most. Switching to an auction at this very late date, when Orion's capital is depleted, per Ms. Lee, doesn't mean Orion no longer *values* the frequency more than its competitors. As such the FCC's Regulatory Flexibility Analysis simply misses the mark.

C. The FCC Order Also Ignores The Concept Of Marginal Analysis.

5. The FCC also argues (¶ 43) "in all likelihood, the amounts bid for the licenses in these cases will reflect the significant amounts already expended by *all* qualified bidders." A

---

[6] Id.

similar statement is made in ¶ 56 of the FCC Order. This claim ignores another fundamental principle of economics -- that of marginal analysis. Marginal analysis holds that economic decisions are made on the basis of marginal benefit versus marginal cost, ignoring sunk costs.

6. In the context of the proposed auction mechanism, participants will increase their bid amounts only if the expected benefit, in terms of expected revenue gains, exceed the expected cost increases. In other words, if expected revenues exceed expected costs, expected profit increases, and rational economic agents will increase their bid. The bidders' previous expenditures actually are irrelevant to auction participants. They base their willingness to bid for a license today on the expected future economic return of the license, given their budget constraints.[7] (This assumes they can *afford* competitive bids. It does not detract from the concept of limited resources discussed above.) Thus the FCC's belief that amounts bid for licenses for frequencies fully litigated under a comparative mechanism would reflect amounts already expended by all qualified bidders is inconsistent with rational economic decision-making.

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[7] See Fresno Mobile Radio, Inc. v. FCC, 165 F.3d 965, 969 (D.C. Cir. 1999).

D. The FCC Changed The Rules In The Middle Of The Game.

7. The FCC's change of rules concerning license distribution mid-course in the qualification process also exemplifies another well-accepted economic principle: a discretionary change in game rules during game play yields an inferior outcome, as compared to the outcome obtained if rules are not changed[8]. This is because decisions made under old rules are costly and rule changes imply that additional costs will be incurred in the adjustment process.

8. An example is useful. If the government issues fixed interest bonds, but later changes to variable interest bonds prior to maturity, this will have unpredictable and unremitted consequences for bond holders. They may gain or lose at bond redemption, depending on actual interest rate outcomes (i.e., higher or lower than the previous fixed rate). Indeed, ¶ 42 of the FCC Order acknowledges this possibility. However, let us examine what would happen if the issuer allows bond holders the option of staying with a fixed interest rate *or* incurring additional risk by switching to variable rates before the bond is

[8] R. J. Barro and D. B. Gordon, "Rules, Discretion and Reputation in a Model of Monetary Policy," Journal of Monetary Economics, 12, 101-122, (1983); M. Friedman, "The Role of Monetary Policy," American Economic Rev., 58, 1-17, (1968); F. E. Kydland and E. C. Prescott, "Rules Rather than Discretion: The Inconsistency of Optimal Plans," Journal of Political Economy, 85, 473-492, (1977).

redeemed. Then bond holders, depending on their risk preferences, might decide to stay with fixed interest rates.

9. In sum, by not providing pending applicants the option of staying under the hearing system, the FCC is changing the rules of the game mid-course, and thereby imposing an inferior outcome. Orion's and similarly-situated applicants' risk preferences and costs previously incurred are factors which legitimately can favor a preference to stay under the comparative hearing system.

E. The FCC Rule Leaves Pending Applicants Such As Orion Economically Damaged.

10. Realistically there are but two options for making pending applicants who tried their comparative hearings to conclusion economically whole in this matter. First, the FCC could have made an exception for pending applicants, allowing license distribution to progress under a comparative hearing system. Alternately, pending applicants could be made economically whole by receiving compensation for the full amount of costs previously incurred. This alternative would, as a matter of pure economics, perhaps begin to ameliorate the dilemma recognized in ¶ 58 of the FCC Order, because it theoretically would place all applicants on even ground. But the FCC has not done this.

I have read the foregoing and declare it to be true to the best of my knowledge. Executed under penalty of perjury this 5th day of May, 1999.

Chera L. Sayers, Ph.D.

Chera L. Sayers, Ph.D.

WZLS Sayers Dec. doc

EXHIBIT 1

Chera L. Sayers, Ph.D.

11750 Owens Glen Way
North Potomac, MD 20878
Voice: (301) 990-8487
Cell: (202) 236-2397
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Summary Of Qualifications:

Ph.D. economist with specialization in econometrics, forecasting, and statistics. Application to economic and financial models.

Education:

Ph.D., Economics, University of Wisconsin-Madison, 1986.
(Advisor: Prof. William A. Brock)
(Dissertation: Empirical Applications of Nonlinear Dynamics)
(Major Field: Labor Economics)
M.S., Economics, University of Wisconsin-Madison, 1984.
B.A., High Honors, Economics, Michigan State University, 1981.

Skills:

- Develop economic and financial models to perform damage assessment (business and personal).

- Apply econometrics, statistics, and time series analysis, including: graphical techniques, quantitative measurement, present value estimation, regression and forecasting models.

- Utilize statistical models to assess economic value, injury and risk.

- Strong presentation and communication skills. Ability to explain economic and financial concepts to laymen.

- Word processing, spreadsheet and statistical software.

Current Position:

1996 to present: Assistant Professor
Department of Finance and Real Estate

Kogod College of Business Administration
American University, Washington, DC

●Foster an atmosphere that encourages students to relate classroom and textbook knowledge to real life. Usual teaching consists of Macroeconomic Theory, Microeconomic Theory and Quantitative Methods to M.B.A. and M.S. Finance students. Preparation of research articles for publication and presentation.

Concurrent Position:

1995 to present: Economic Consultant
Washington, DC

●Provide litigation support to area businesses and attorneys. Services include damage assessment, structured settlement evaluation, business valuation, discovery assistance, and a variety of economic, statistical and forecasting analyses useful for complex litigation.

Previous Positions:

1995 to 1996: Adjunct Professor of Economics
School of Business Administration
Marymount University, Arlington, Virginia

1988 to 1994: Assistant Professor (on leave 1990-1994)
Department of Economics
University of Houston, Houston, Texas

1990 to 1993: Industry Economist, GM-14, Division of Economic Analysis
Commodity Futures Trading Commission, Washington, D.C.

1987 to 1988: Visiting Assistant Professor, Department of Economics
University of North Carolina, Chapel Hill, North Carolina

1986 to 1987: Visiting Assistant Professor, Department of Economics
Haverford College, Haverford, Pennsylvania

Publications:

"Multivariate Nonlinear Forecasting: Using Financial Information to Forecast the Real Sector," joint with Ted Jaditz and Leigh A. Riddick, *Macroeconomic Dynamics*, (2), 1998, pp. 369-382.

"Out of Sample Forecast Performance as a Test for Nonlinearity in Time Series," joint with Ted Jaditz, *Journal of Business and Economic Statistics*, (16), 1998, pp. 110-117.

"Nonlinear Statistical Inference," in: *Encyclopedia of Business Cycles, Panics, Crises and Depressions*, David Glasner, ed. (Garland Publishing, New York, N.Y.), 1997, 492-495.

"Searching for Nonlinearity in Mean and Variance: Expanded Version," joint with Ted Jaditz, in: *Nonlinear Dynamics and Economics*, W.A. Barnett, Mark Salmon and Alan Kirman, eds., (Cambridge University Press, Cambridge), 1996, pp. 201-218.

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"Are Chaotic Attractors Generic in Economic Data?," joint with Ted Jaditz, invited paper, *International Journal of Bifurcation and Chaos*, (3), 1993, pp. 745-755. Reprinted in: *Measures of Complexity and Chaos* (Proceedings of the Second Workshop), N. B. Abraham, A. M. Albano, A. Passamante and P. E. Rapp and R. Gilmore, eds. (World Scientific Publishing, N.J.), 1994.

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"Statistical Inference Theory Using Finite and Noisy Data Sets," in: *OSA Proceedings on Nonlinear Dynamics in Optical Systems*, Neal B. Abraham, Elsa M. Garmire, Paul Mandel, eds. (Optical Society of America, Washington, D.C.), Vol. 7, 1991, pp. 5-8.

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Book Reviews:

Review of: *Nonlinear Dynamics and Evolutionary Economics*, Richard H. Day and Ping Chen, eds., (Oxford University Press, New York, N.Y.), 1993, *Journal of Economic Behavior and Organization*, forthcoming.

Recent Working Papers:

"Is the United States CPI Biased Across Income and Age Groups?" joint with S. Nuri Erbas, International Monetary Fund, IMF Working Paper #WP/98/136, presented at the 1997 Eastern Economic Association Annual Meeting, submitted for presentation at the 1999 International Institute for Public Finance Meetings. Also submitted for publication.

"Can a Shorter Workweek Induce Higher Employment?" joint with S. Nuri Erbas, International Monetary Fund, IMF Working Paper #WP/98/136, submitted for presentation at the 1999 European Economic Association Meetings.

"External Stability Under Alternative Nominal Exchange Rate Anchors: An Application to the GCC Countries," joint with S. Nuri Erbas and Zubair Iqbal, International Monetary Fund, IMF Working Paper #WP/97/8, revise and resubmit status, *Macroeconomic Dynamics*.

Honors And Grants:

University of Houston Research Initiation Grant, 1990
Nominated for Social Science Teaching Excellence Award, 1990
University of Wisconsin Distinguished Teaching Assistant, 1984 and 1985
University of Wisconsin Harry Bullis Scholarship, 1985
Michigan State University Board of Trustee's Scholarship, 1981
Phi Kappa Phi, Omicron Delta Epsilon

Academic Refereeing Work:

Annals d'Economie et de Statistique
Annals of Operations Research
Econometric Reviews
Economic Inquiry
Economic Journal
Financial Management

International Economic Review
International Journal of Bifurcation and Chaos
Journal of Agricultural Economics Research
Journal of Applied Econometrics
Journal of Business and Economic Statistics
Journal of Econometrics
Journal of Futures Markets
Journal of Money, Credit and Banking
Journal of the American Statistical Association
National Science Foundation
Physica D
Proceedings of the International Symposia in Economic Theory and Econometrics
Review of Regional Studies
Structural Change and Economic Dynamics
Studies in Nonlinear Dynamics and Econometrics

Professional Activities:

President, Financial Management Association Honor Society, American University Chapter, Kogod College of Business Administration, 1996 to present.

Program Committee, Eastern Finance Association Program, Corporate Finance Track, 1998.

Organizing Committee, Symposium on Non-linear Econometrics and Theory, in conjunction with the Eastern Economic Association Meetings, 1994 and 1995.

Organizing Committee, Society on Non-linear Dynamics and Econometrics, 1993 to present.

Academic Presentations:

Washington Area Finance Research Conference, 1997.
Eastern Economics Association Meetings, 1993, 1994, 1995, 1997.
Department of Economics, The American University, 1994.
Winter Meetings of the Econometric Society, 1987, 1989, 1990, 1993, 1994.
American Statistical Association Meetings, 1993.
Department of Economics, Clemson University, 1992.
Institute for Physical Science and Technology, University of Maryland, 1992.

Measures of Complexity and Chaos II, Bryn Mawr College, 1992.
Western Economic Association International Conference, 1991, 1992.
Summer Meetings of the Econometric Society, 1992.
Board of Governors of The Federal Reserve System, 1992.
Southern Finance Association Meeting, 1991.
Conference on Nonlinear Dynamics and Econometrics, University of California at Los Angeles, 1991.
Securities and Exchange Commission, 1991.
Bureau of Labor Statistics, 1991.
Commodity Futures Trading Commission, 1990.
Fifth Annual Congress of the European Economic Association-Invited Lecture, 1990.
World Congress of the Econometric Society, 1990.
International Workshop and Topical Meeting on Nonlinear Dynamics in Optical Systems-Plenary Lecture, Optical Society of America, 1990.
Department of Economics, George Washington University, 1990.
Mathematics Association of America, University of Houston, 1989.
Quantitative Measures of Dynamical Complexity in Nonlinear Systems, Bryn Mawr College, 1989.
Conference on Fractals and Chaos in the Natural and Social Sciences-Keynote Address, Miami University, 1989.
Department of Physics, Visiting Scholar Series, University of Rhode Island, 1989.
Department of Economics Workshop, University of California-Santa Cruz, 1989.
American Association for the Advancement of Science: Special Chaos Symposium, 1989.
European Meetings of the Econometric Society, 1988.
Department of Economics Workshop, University of Guelph, 1988.
Department of Economics Workshop, University of Houston, 1988.
Macroeconomics Workshop, Duke University, 1987.
Econometrics Workshop, North Carolina State University, 1987.
International Symposia in Economic Theory and Econometrics: Economic Complexity, Chaos, Sunspots, Bubbles and Nonlinearity, University of Texas at Austin, 1987.
C.V. Starr Center for Economics, New York University, 1986.

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

In the Matter of	)	
	)	
Implementation of Section 309(j) of the Communications Act- Competitive Bidding for Commercial Broadcast Instructional Television Fixed Services	)	**MM Docket 97-234**
	)	
Reexamination of the Policy Statement on Comparative Broadcast Hearings	)	**GC Docket 92-52**
	)	
Proposals to Reform the Commission's Comparative Hearing Process to Expedite The Resolution Of Cases	)	**GEN Docket 90-264**

DECLARATION OF BETTY LEE

1. I am a principal of Orion Communications, Ltd. I have been serving as Acting Chief Executive Officer since my husband, Zebulon Lee, passed away.

2. Orion is a family-owned business now operated by myself and my sons, Barry Lee and Brian Lee. We have sought to obtain the Biltmore Forest, N.C.-FM frequency since 1986. We have steadfastly refused offers to "flip" the station or be bought out for large sums of money. We also have declined offers from third parties to lend Orion huge amounts of money in return for a controlling interest in Orion. We have jointly discussed on innumerable occasions our business strategy and concept. Not once have we wavered in our desire to own and control a family business. Zeb Lee made clear that Orion was to be a family legacy.

3. We have pursued the frequency in good faith. We litigated a comparative hearing and several rounds of administrative appeals as well as

several discrete appeals to the United States Court of Appeals for the District of Columbia Circuit. Our legal fees and costs are in excess of $500,000.00.

4. Orion litigated under the reasonable belief that the most qualified applicant, and not the richest one, would obtain the frequency. For the Commission to change its mind and require us now to seek the frequency by way of an auction, means our prior investment was all for naught. We cannot recoup any of it. Worse yet, because we assumed the prior FCC rules for awarding permits were bona fide, we litigated in good faith reliance on those rules. Thus we are now in a far worse position financially than if we had conserved financial resources by doing the bare minimum throughout the hearing process in order to keep our application alive. Having expended virtually all our family resources to obtain a grant under the FCC's prior procedures, our family simply lacks the financial resources at this point to take a realistic part in an auction process. Thus our business will be destroyed because the FCC has arbitrarily abandoned the very process the Commission had set forth and required Orion to follow, at considerable cost, for years.

5. I ask the Commission to agree to stay an auction of our frequency, and any other in which an administrative hearing had been completed prior to July 1, 1997. There are very few of such cases and there would be no harm to the public interest in awaiting the Court of Appeals' resolution of these cases in the pending appeals.

I have read the foregoing and declare under penalty of perjury that it is true to the best of my knowledge.

Executed at Asheville, N.C. this 5th day of May, 1999.

Betty Lee

Betty Lee

Certificate of Service

I certify that I caused a copy of the foregoing to be served this 5th day of May, 1999 by first class mail upon the following: Robert J. Wiggers, Esq., Department of Justice, Antitrust Div., Appellate Section, Rm. 10535, Patrick Henry Bldg., 601 D St., NW, Washington, D.C. 20530; *Daniel M. Armstrong, Esq. & Gregory Christopher, Esq., Office of the General Counsel, Office of the General Counsel, FCC, 445-12th St., SW, Washington, D.C. 20024; Stephen Yelverton, Esq., 1225 New York Ave., NW, Washington, D.C. 20005; Timothy Brady, Esq., Suite 208, P.O. Box 986, Brentwood, TN 37207; Donald J. Evans, Esq., Donelan, Clary, Wood & Maser, 1100 New York Ave., NW, Suite 750-W, Washington, D.C. 20005-3934; Robert Depont, Esq., P.O. Box 386, Annapolis, MD 21404; *Harry Cole, Esq. & Gene Bechtel, Esq., Bechtel & Cole, Chtd., 1901 L St., NW, Washington, D.C. 20036; Robert Marmet, Esq., 2932 Thurston Rd., Frederick, MD 21704; Richard Swift, Esq., Tierney & Swift, 2173 K Street, NW, Suite 350, Washington, DC 20037.

Lee J. Peltzman

*Via Hand-delivery