

ORIGINAL
RECEIVED
OCT - 4 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, DC 20054

In the Matter of)
)
Review of the Commission's Regulations)
Governing Television Broadcasting)

Television Satellite Stations Review of)
Policy and Rules)

MM Docket No. 91-221

MM Docket No. 87-8

TO: The Commission

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS
ON PROCESSING ORDER ISSUES,
PUBLIC NOTICE, FCC 99-240**

The National Association of Broadcasters ("NAB")¹ submits these comments in response to the Commission's Public Notice, FCC 99-240 (rel. Sept. 9, 1999), seeking comment on the processing order for applications filed pursuant to the revised broadcast local ownership rules ("*Public Notice*"). Although NAB expresses no opinion on the method for determining the processing order of conflicting applications, the Commission must ensure that, regardless of the method selected, preexisting station combinations will be protected.

BACKGROUND

In its order amending the broadcast local ownership rules,² the Commission recognized that the new rules could result in two or more applications being filed on the

¹ NAB is a nonprofit incorporated association of radio and television stations and broadcast networks. NAB serves and represents the American broadcasting industry.

² *Report and Order* in MM Docket Nos. 91-221 and 87-8, FCC 99-209 (rel. Aug. 6, 1999) ("*Ownership Order*").

No. of Copies rec'd 0711
List ABCDE

same date relating to stations in the same market and that, due to the rules' voice count requirements, all applications might not be grantable. The Commission did not address this problem in the *Ownership Order*, but, in its subsequently released *Public Notice*, proposed to use random selection to determine the processing order for applications relating to the same market that are filed on the same day.

DISCUSSION

NAB expresses no opinion on the Commission's proposal to use lotteries to determine the processing order of conflicting applications. However, NAB strongly believes that, whatever method is utilized to determine processing order, preexisting station combinations (especially pre-November 5, 1996 television Local Marketing Agreements and radio/television combinations granted conditionally) must be protected under both the television duopoly and radio/television cross-ownership rules.³

Specifically, parties to existing combinations should not be subject to the proposed lottery procedures, and any lottery to determine the processing order of conflicting applications should include only those applicants filing to create new station combinations under the amended duopoly or cross-ownership rule. Thus, for example, parties with grandfathered LMAs who apply for a television duopoly under the revised rule should not be forced into a lottery with other, non-grandfathered parties who file an application seeking to create a new duopoly in the same market. Instead, as the Commission has suggested in the *Ownership Order*,⁴ grandfathered LMAs should

³ In the *Ownership Order* (at ¶ 146), the Commission specifically determined to grandfather television Local Marketing Agreements ("LMAs") entered into prior to November 5, 1996.

⁴ In its order, the Commission stated that it would not include stations that are brokered pursuant to attributable same-market LMAs in its count of independently owned media

already count as existing combinations in determining both the number of independent voices remaining in a local market and the number of new combinations that can be formed in the market under the relevant voice counts. Any lottery would therefore be held to determine the processing order of applications competing to form the number of new station combinations allowable under the applicable voice counts, *after* taking existing combinations (especially grandfathered LMAs and conditionally granted radio/television combinations) into consideration.⁵

In sum, parties with existing station combinations should not be required to submit applications on the first possible filing date to preserve their rights, nor should they be forced into a lottery in which they could “lose” their right to form a permanent combination (such as a television duopoly) to parties seeking to create entirely new station combinations. NAB believes this approach to conducting the proposed processing lotteries constitutes a logical outgrowth of the Commission’s determination that existing same-market LMAs should not be counted as independent voices in local media markets. *See Ownership Order* at ¶¶ 67, 111. Moreover, the Commission has already recognized the efficiency and public interest benefits of LMAs (*see Ownership Order* at ¶¶ 34-36, 145), and determined to grandfather pre-November 5, 1996 television LMAs. *See id.* at ¶ 146. NAB asserts that the same interests supporting the grandfathering of existing LMAs support a recognition of these LMAs as existing combinations under any lottery or other procedure adopted by the Commission to determine application processing order.

voices under the television duopoly or radio/television cross-ownership rule. *See Ownership Order* at ¶¶ 67, 111.

⁵ Existing station combinations should be protected in this manner, even if the parties involved do not submit applications to, for example, convert their LMAs into permanent duopolies on the first possible filing date (*i.e.*, November 16, 1999).

Because NAB sees no justification for disrupting preexisting station combinations that have “resulted in public interest benefits” (*Ownership Order* at ¶ 145), the Commission should refrain from applying its proposed lottery procedures at least with respect to those parties in grandfathered LMAs or conditionally granted radio/television combinations.⁶

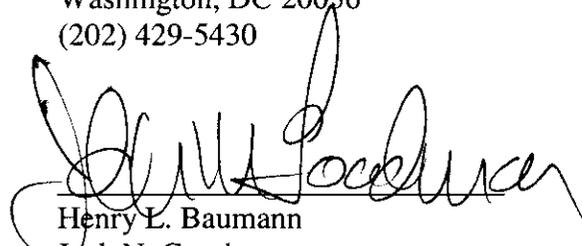
CONCLUSION

For the foregoing reasons, the Commission must ensure that, regardless of the method selected to determine the processing order of conflicting applications, preexisting station combinations (including pre-November 5, 1996 television LMAs and conditionally granted radio/television combinations) will be protected from disruption by parties applying to form new combinations under the duopoly and cross-ownership rules.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

1771 N Street, N.W.
Washington, DC 20036
(202) 429-5430



Henry L. Baumann
Jack N. Goodman
Jerianne Timmerman

October 4, 1999

⁶ Cf. *FCC v. National Citizens Committee for Broadcasting, et al.*, 436 U.S. 775, 804-805 (1978) (observing that “Commission has consistently acted on the theory that preserving continuity of meritorious service furthers the public interest,” and stating that it was not irrational for the Commission to find that “disruption” to the broadcast industry “would result in harm to the public interest”).