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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 4, 1999

Office of the Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

RE: Supplemental Comments
MM Docket No 91-221 & 87-8
FCC99-240

Dear Sir/Madam:

Attached please find an original four copies of ATLV's Supplemental Comments & Request for Clarification filed in the above captioned matter. Please place these comments in the FCC record in this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Donovan', is written over a horizontal line.

David Donovan

cc: Vickie Phillips, Esq.
Chief, Legal Branch
Policy & Rules Division
Mass Media Bureau

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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Review of the Commission's Regulations
Governing Broadcasting

Television Satellite Stations Review of
Policy and Rules

MM Docket No. 91-221 ✓

MM Docket No. 87-8

**SUPPLEMENTAL COMMENTS
REQUEST FOR CLARIFICATION
BY THE
ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.**

The Association of Local Television Stations hereby files these *Supplemental Comments* in response to the Commission's *Public Notice* issued in the above captioned proceeding.¹ In the *Public Notice* the FCC seeks comment on the processing of applications filed pursuant to the new local broadcast ownership rules.

The issue concerns the order in which the FCC will accept applications for new station combinations under the new local ownership rules. The issue is extremely important due to the FCC's decision to adopt an "eight independent voice" standard for its new television duopoly rule. In some markets, new local market combinations may bring the independent voice count

¹*Public Notice*, FCC-99-240, September 29, 1999

below the “eight voice” standard, thereby precluding some stations from forming new combinations.² The standard has created a “race to the courthouse” which requires the FCC to adopt “tiebreaker” procedures for applications filed on the same day. The *Public Notice* proposes a random lottery procedure for making determinations among applications filed on the same day.

As a general matter, ALTV takes no position on the use of a random lottery tiebreaker procedure. We are concerned, however, about which applications will become subject to the lottery.

As we understand the current rule, local market combinations (including LMAs) entered into prior to November 5, 1996, will be counted as a single voice under the new “eight station voice” count. To the extent these stations are already counted as a single voice, they should not be subjected to the lottery “tiebreaker” procedures. Thus, these combinations should be permitted to either retain their LMA status or convert to outright common ownership without becoming subject to the lottery procedures. Moreover, because they are already considered to be a single voice in the market, these LMAs should be able to convert to a duopoly at any time in the future, even in cases where the number of voices is either at or below the “eight” voice threshold.

²ALTV continues to oppose the voice count approach now employed in the new television duopoly rule. The standard may prevent local market combinations from forming in small and medium sized markets. Ironically, local market combinations are very important for small markets, because the smaller populations make it more difficult to support independently owned free over-the-air television combinations.

The same principle should be applied to combinations that were created after November 5, 1996. These "post 96" arrangements should be counted as an existing single voice and exempt from the Commission's duopoly lottery.

From a policy perspective, exempting these combinations from the lottery is fully consistent with the FCC's diversity objectives. From a pure diversity perspective, it appears the FCC does not care which combinations are permitted to exist in a market. Its desire to employ a lottery demonstrates that it is incapable of developing meaningful criteria to choose between combination "A," combination "B" or combination "C." According to the FCC's approach, it does not matter which combination is ultimately permitted to exist. The key public policy concern is to make sure the absolute number of voices in a market does not drop below "eight" independent voices.

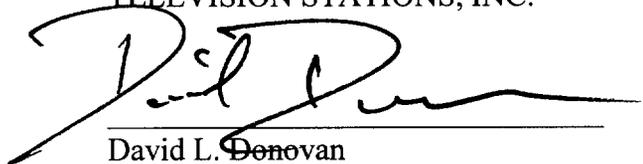
Because it does not matter which combination is permitted to exist, we believe other considerations should tip the scale in favor of existing combinations, even for combinations formed after November 6, 1996. Simple fairness dictates that pre-existing arrangements should be considered as a single voice, and not subject to random lottery procedures. Some existing combinations (both LMAs and other attributable combinations that are now subject to the new attribution rules) have been existence for years. In some cases, tens of millions of dollars have already been invested in the weaker station, thereby improving service to the local community. It would be a disservice to both the public and the stations to force these combinations to divest simply because they did not win a lottery.

Finally, we believe *all* existing local marketing agreements should be exempt from the proposed duopoly lottery procedures. The Commission's local ownership decision was designed

to permit direct common ownership of two stations in a market and move away from a model which created incentives to form local marketing agreements. One way to facilitate this policy is to permit *all* currently existing local marketing agreements to convert to duopolies without taking the risks inherent in a lottery.

In summary, ALTV seeks confirmation that local market combinations (including LMAs) that were in existence prior to August 5, 1996, will be counted as a single voice, and exempt from the Commission's lottery "tiebreaker" procedure, when these combinations decide to form outright duopoly combinations. Similarly, *all* local market combinations (including LMA's and other attributable interests) created after August 5, 1996, should be counted as a single voice in the market and exempt from the FCCs "tiebreaker" lottery procedures.

Respectfully submitted,
ASSOCIATION OF LOCAL
TELEVISION STATIONS, INC.



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October 4, 1999