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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

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

The National Association of Broadcasters ("NAB")<sup>1</sup> submits this reply to certain comments filed in response to the Commission's Public Notice, FCC 99-240 (rel. Sept. 9, 1999), concerning the processing order for applications filed pursuant to the revised broadcast local ownership rules ("*Public Notice*"). Specifically, in its *Public Notice*, the Commission proposed to use random selection to determine the processing order for applications relating to the same market that are filed on the same day. In its comments responding to this *Public Notice*, NAB expressed no opinion on the Commission's proposal to use lotteries to determine the processing order of conflicting applications. However, NAB strongly asserted 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

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

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conditionally) must be protected.<sup>2</sup> Other comments submitted in response to this *Public Notice* made varying proposals regarding the methods to utilize in resolving conflicts between applications filed pursuant to the amended local ownership rules. In this reply, NAB reemphasizes that, regardless of the method selected to determine the processing order of conflicting applications, preexisting station combinations (including grandfathered television LMAs and conditionally granted radio/television combinations) must be protected from disruption by parties applying to form new combinations under the television duopoly and radio/television cross-ownership rules. These reply comments will also briefly address two proposed alternative methods for determining the processing order of conflicting applications that NAB believes would, if adopted, likely create unnecessary complexities and additional delays.

#### **I. The Record Supports Providing Protection For Existing Station Combinations.**

A number of commenters agreed with NAB that the Commission's method for resolving conflicts among applications filed pursuant to the revised local ownership rules should take into account preexisting station combinations, particularly television LMAs.<sup>3</sup> While these commenters differed in the details of their proposals for preserving existing station combinations, they all noted the public interest benefits generated by combinations such as LMAs, as well as the need to avoid disrupting settled relationships and the reasonable expectations of the parties to those relationships. Especially with

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<sup>2</sup> In its order amending the broadcast local ownership rules, the Commission specifically determined to grandfather television Local Marketing Agreements ("LMAs") entered into prior to November 5, 1996. *See Report and Order* in MM Docket Nos. 91-221 and 87-8, FCC 99-209 at ¶ 146 (rel. Aug. 6, 1999) ("*Ownership Order*").

<sup>3</sup> *See* Comments of Tribune Broadcasting Company at 4-7; Sinclair Broadcast Group, Inc. at 3-4; Paxson Communications Corporation at 5-6; Association of Local Television Stations, Inc. at 2-4.

regard to existing LMAs that the Commission has already determined to grandfather and conditionally granted radio/television combinations, NAB emphasizes that no commenter has provided a convincing justification for ignoring preexisting combinations in favor of parties applying to form new combinations under the duopoly and cross-ownership rules.<sup>4</sup>

## **II. The Commission Should Not Adopt Certain Proposed Alternative Methods For Resolving Application Conflicts.**

NAB reiterates that it is expressing no opinion on the Commission's lottery proposal, and, as a general matter, is concerned about the various possible methods of resolving application conflicts only in so far as these methods protect – or fail to protect – existing station combinations. However, two commenters did propose alternative methods for determining application processing order that NAB believes would likely create unnecessary complexities and cause undue delays.

The Office of Communication Inc. of the United Church of Christ, *et al.* (“UCC”) proposed utilizing a point system for determining the processing order of conflicting applications. NAB opposes the adoption of any such system of comparative criteria. The significant difficulties experienced by the Commission in adopting and defending comparative criteria have been well documented.<sup>5</sup> This past experience indicates that the adoption of comparative criteria, as suggested by UCC, would likely be challenged by

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<sup>4</sup> By contrast, LMAs that were formed only after the Commission adopted the *Ownership Order* on August 5, 1999 would appear unlikely to have generated the same degree of public interest benefits as the pre-November 5, 1996 LMAs that the Commission has grandfathered. The interest in protecting the expectations of the parties to these recently formed, nongrandfathered LMAs would also seem less strong. Thus, NAB believes that post-August 5, 1999 LMAs do not warrant the degree of protection from disruption by new station combinations that grandfathered LMAs deserve.

<sup>5</sup> See, e.g., *First Report and Order* in MM Docket No. 97-234, GC Docket No. 92-52 and GN Docket No. 90-264, 13 FCC Rcd 15920 at ¶¶ 31-37 (1998) (discussing difficulty of adopting comparative criteria in broadcast context that would withstand judicial scrutiny).

parties disadvantaged by such criteria, thereby leading to considerable delays in implementing a method to resolve conflicting applications. More specifically, NAB notes the problematic nature of some of the criteria suggested by UCC, particularly those criteria pertaining to the local community involvement of the applicant.<sup>6</sup> For these reasons, NAB asserts that the Commission should not consider the adoption of comparative criteria to resolve conflicts between applications filed under the revised local ownership rules.

In its comments (at ii), the Minority Media and Telecommunications Council (“MMTC”) proposed that conflicts between applications be resolved based on “whether the . . . applicants propose to spin off full power television stations to socially and economically disadvantaged small business concerns.” In essence, an applicant for a television duopoly proposing such a spinoff in another market would be “bumped” to the top of the application processing line.

Although NAB supports the goal of increasing the participation of new entrants (including minorities and women) in broadcasting, NAB has reservations about MMTC’s proposal. The sole issue raised in the Commission’s *Public Notice* is a narrow one of determining the processing order of an unknown number of conflicting applications that are expected to be filed on the day the revised local ownership rules become effective. This does not appear to NAB to be the appropriate context for engaging in a wide-ranging policy debate as to the best methods for promoting diversity in the broadcast

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<sup>6</sup> For example, UCC proposes awarding points if the proposed transferee or assignee is an active resident of the local community. NAB doubts that this criterion would pass muster under *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993), because comparative factors such as local residence and civic participation were regarded as “enhancements” of the integration criterion that the *Bechtel* court invalidated when examining the Commission’s broadcast comparative hearing criteria.

industry. Instead, these important issues should be raised in proceedings addressing the Commission's general broadcast licensing and ownership policies, rather than in a supplemental proceeding intended only to address the very narrow issue of the order of application processing.<sup>7</sup> In sum, NAB believes that the goal of this limited proceeding should be the adoption of an efficient, fair and easy to administer method of determining the processing order of applications expected to be filed pursuant to the new ownership rules on their effective date. Attempting to create and implement an entirely new program to increase television station ownership by socially and economically disadvantaged small businesses in this context would inevitably lead to delays in the processing of the transfer and assignment applications expected to be filed next month.<sup>8</sup> For these reasons, the Commission should not adopt MMTC's proposal regarding application processing order.

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<sup>7</sup> For example, in the proceeding to adopt auction procedures for broadcast licensing, the Commission did establish a tiered bidding credit to increase opportunities for new entities (including minority- and women-owned businesses) to enter the broadcast industry. *See Report and Order* in MM Docket No. 97-234, GC Docket No. 92-52 and GN Docket No. 90-264, 13 FCC Rcd 15920 (1998).

<sup>8</sup> Moreover, given the recognition in the *Ownership Order* (*see* ¶¶ 34-36) of the economic efficiencies and public interest benefits generated by common ownership of broadcast facilities, the Commission should not reverse its position by determining the processing order of applications filed pursuant to the *Ownership Order* based on the *spinoff* of commonly owned stations to other entities.

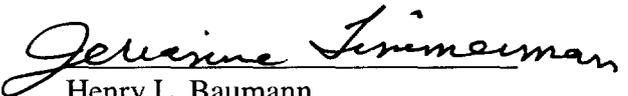
### III. Conclusion

NAB supports the Commission's stated intention to establish a "prudent, easy to administer, and fair method for determining the order" of application processing. *Public Notice* at 2. In this regard, NAB emphasizes that the record here clearly recognizes the fairness of providing protection for existing station combinations when selecting a method for resolving conflicts among applications proposing entirely new station combinations.

Respectfully submitted,

**NATIONAL ASSOCIATION OF  
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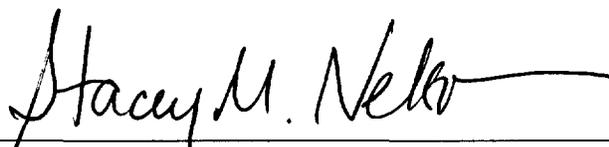
## CERTIFICATE OF SERVICE

I, Stacey M. Nelson, Legal Secretary for the National Association of Broadcasters, hereby certifies that a true and correct copy of the foregoing Reply Comments of the National Association of Broadcasters was sent this 12<sup>th</sup> day of October, 1999, by first-class mail, postage prepaid, to the following:

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