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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8

To: The Commission

REPLY COMMENTS OF ABC, INC.

ABC, Inc. ("ABC") respectfully submits these reply comments on the proposed procedures for processing applications filed pursuant to the Commission's new local broadcast ownership rules. *See* Public Notice, FCC 99-240 (released September 9, 1999) ("Notice").

As the Notice indicates, this supplemental rulemaking is designed to address the processing of only a limited number of applications: those filed "pursuant to the Report and Order" adopted in this proceeding on August 5, 1999. *Id. See also Report and Order* ¶ 150 (refusing to accept applications "filed pursuant to this *Report and Order*"). None of the comments filed in this proceeding addresses applications filed before the effective date of the new ownership rules pursuant to the Commission's rules currently in effect. Indeed, the Notice and Report and Order both indicate that such applications would not be subject to the procedures to be developed for applications filed pursuant to the new rules. And ABC was advised by Commission staff this summer to prepare its application

to acquire radio station WWJZ(AM) in accordance with the current rules rather than in accordance with the rules taking effect in November.

Despite these assurances, ABC was recently advised by Commission staff that its September 13 application to acquire radio station WWJZ(AM) within the Philadelphia market may not be accepted for filing, but instead may have to be refiled on November 16 and then subject to the tie breaking procedures to be developed in this supplemental rulemaking. ABC's application to acquire WWJZ satisfies the long-established "top 25/30 voices" waiver policy that is still in effect until the effective date of the new rules. Moreover, the application will also satisfy the new cross-ownership rules, regardless of the number of independent voices in the Philadelphia market, since ABC owns only one television station in Philadelphia and WWJZ would be its first radio station in that market.

As demonstrated below, ABC believes that it would be wrong to defer previously filed transfer applications that satisfy the current top 25 market/30 voices test and that will satisfy the new rules regardless of voice count, and to subject them to the same tie-breaking procedures as other applications, filed under the new rules, whose outcome could depend on the number of independent voices in the market. Such treatment of previously filed transfer applications that qualify for an automatic waiver under the top 25/30 voice rule and that would result in ownership of only one television and one radio station in a market would, in our view, be inconsistent with the stated policy of the Report and Order, inconsistent with Section 202(d) of the 1996 Act, and disruptive of settled expectations upon which broadcasters have reasonably relied.

First, the Report and Order has made clear that, under the new rules, a television licensee would be entitled to acquire one radio station in the market "notwithstanding the number of independent voices in the market." *Id.* ¶ 100. Indeed, the Commission has determined "that the public interest will be served" by such combinations "regardless of . . . voice counts." *Id.* ¶ 110 n. 166. Thus, regardless of what other applications are filed on or after November 16 and in what order they are processed, the transfer of WWJZ would comply with the new cross-ownership rules since the combination of one television and one radio station in a single market (in the case of WWJZ, the Philadelphia market) is permissible regardless of voice count.[1] Refusing to consider such applications before November 16 and then subjecting them to the tie breaking procedure would create undue delay and uncertainty in the processing of those applications and thus would undermine the Commission's own judgment that granting any such applications would necessarily be in the public interest. That judgment reflected the Commission's conclusion that the benefits of such combinations outweigh any potential competition or diversity concerns without regard to the foreclosure effects that it has deemed relevant to other combinations.

Second, that judgment has statutory force, as the Commission has recognized in the Report and Order. Section 202(d) of the 1996 Act, which is entitled "Relaxation of One-to-a-Market," directed the Commission to "extend its [one-to-a-market top 25 market/30 voice] waiver policy to any of the top 50 markets, consistent with the public

[1] Moreover, the Commission should consider that in the case of the WWJZ application, the market in question is Philadelphia. As demonstrated in the application for waiver of the one-to-a-market rule that was included in the WWJZ transfer application, Philadelphia has at least 65 current voices. The likelihood that there will be so many applications filed on November 16 so as to bring the voice count in Philadelphia below 20, requiring that any cross-ownership applications be rejected, is extremely remote.

interest, convenience and necessity." *See id.* The goal of this section of the Act was to loosen the procedures for approving radio-television cross-ownership. By subjecting applicants that satisfy both the old and the new, more relaxed policy to the prospect of months of delay and uncertainty by requiring that their applications be refiled under the new rules and then be subjected to the new tie breaking procedures, the Commission would be making such applicants worse off, at least procedurally, under the new rules than they are under the current policy. That would be inconsistent with the judgment reflected in Section 202(d).

Finally, subjecting to a tie breaking procedure applicants, such as ABC, that satisfy the current top 25/30 voice waiver policy and that would satisfy the new radio-TV cross-ownership rules without reference to voice count, would be inconsistent with broadcasters' reasonable reliance on the availability and expeditiousness of the application processing procedure. In its Second Further Notice of Proposed Rulemaking, the Commission noted that, "[c]onsistent with Section 202(d)," it proposed, "at a minimum, to extend" that policy "to the Top 50 markets." FCC 96-438, at ¶ 66 (released Nov. 7, 1996). And it noted that waiver requests submitted pending the resolution of this proceeding "will be processed pursuant to our current criteria for evaluating such requests." *Id.* ¶ 79. Broadcasters that have invested substantial resources in seeking to acquire stations consistent with established waiver policy, based on these assurances, cannot fairly be subjected to the delay, uncertainty and tie breaking procedures that may be necessary to select from mutually exclusive applicants. Indeed, the absurdity of such treatment becomes readily apparent if one considers that if the WWJZ transfer application were to be filed for the first time on November 17, there would be no legal

basis to deny acceptance for filing. Only in a topsy-turvy world should a different result obtain because the application was filed on September 13 (in full compliance with the rules in effect at that time).

For the foregoing reasons, the Commission should clarify that any tie breaking procedures that may be established for applications that are dependent on the number of independent voices in the market and that may therefore be mutually exclusive will not apply to applications, submitted prior to the effective date of the new rules, that qualify for a waiver under the present top 25 market/30 voices policy and that would also qualify under the new rules for ownership of radio-television combinations without regard to market size. Rather, applications that meet the old waiver test and will meet the new one without regard to voice count should be processed in the order that they are received.

Respectfully submitted

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