BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Processing Order for Applications	)	MM Docket No. 91-221
Filed Pursuant to the Commission's	)	MM Docket No. 87-8
New Local Broadcast Ownership Rules	)	

To: The Commission

REPLY COMMENTS OF SINCLAIR BROADCAST GROUP, INC.

Sinclair Broadcast Group, Inc. ("SBG"), by its attorneys, hereby submits its Reply Comments on the Processing Order for Applications Filed Pursuant to the Commission's New Local Broadcast Ownership Rules as set forth in the Commission's Public Notice, FCC 99-240, released September 9, 1999 (the "Public Notice"). A review of the Comments that have been filed in this proceeding leads to the inexorable conclusion that the Commission lacks the statutory authority to use random selection to choose among multiple broadcast applications filed on the same day; that a system of random selection will not serve the public interest; and that the question of processing should be deferred until the Commission has the opportunity to consider the substantial flaws in its new local ownership rules. While some commenters have proposed alternatives to a random selection system, as the National Association of Broadcasters ("NAB"), the Association of Local Television Stations, Inc. ("ALTV") and others have noted, any alternative system must protect preexisting station combinations.

I. The Commenters have Demonstrated that The FCC Lacks the Statutory Authority To Implement Its Random Selection Proposal

1. The Comments filed by the Office of Communication Inc. of the United Church

of Christ et al. ("UCC") and by Sinclair demonstrate that the Commission has no authority to use a lottery system to dispose of broadcast assignment and transfer applications, and even assuming *arguendo* that the Commission had such authority, it does not serve the public interest to make such a decision based on pure chance. As UCC and Sinclair have pointed out, the plain language of Section 309(i) gives the FCC authority to hold a lottery *only* to dispose of initial applications for licenses in certain situations and nothing in Section 310(d) provides the FCC with the authority to use lotteries.

2. The Commission's suggestion in the Public Notice that it has the necessary authority is not supported by any commenter. Indeed, the general tenor of the comments is that the use of a lottery would be "impracticable," "inequitable," "inefficient," "chaotic," and "unfitting." (See e.g. UCC comments at pp. 2 and 4; Comments of Paxson Communications Corporation ("PCC") at p. 3).

II. The Comments Reflect That There Are Serious Flaws In the Commission's New Local Ownership Rules Which Must Be Addressed Before the Processing of Applications Can Be Resolved

3. As both PCC and Sinclair have shown, the "8 voice" standard adopted in the Local Ownership Rules is arbitrary and unfair. It fails to take into account other media outlets and is inconsistent with the standard adopted for radio-television cross ownership. There is no explanation as to how the Commission has arrived at the magic number "8" or why that number is better or worse than some other number. The 8 voice test also harms many smaller markets. Until the Commission has reconsidered the "8 voice" test, it is not sensible or practical to set a processing order for applications. For instance, Sinclair's proposal that the FCC should permit

television duopolies subject to review by the Department of Justice's Antitrust Division would largely if not totally eliminate the problem of choosing among applicants.

4. As a number of the commenters have observed, the Public Notice concerning the processing of multiple applications fails to deal with existing time brokerage agreements, local marketing agreements and program service agreements ("LMAs"). Those agreements are attributable upon the effective date of the new local ownership rules and thus change the voice count in many markets creating a substantial impact on the processing of applications. As PCC notes, the "demonstrated service commitment [of a long-standing LMA] ought to be acknowledged by the Commission and factored into the decision regarding the order in which conflicting local ownership applications are processed." (PCC Comments at p. 7). In addition, certain investments will become attributable under the new equity debt plus rule (if that rule survives reconsideration) and while investments alone should not have the priority afforded to LMAs, the Commission must factor their attribution into its processing standard.

5. LMAs in existence prior to August 5, 1999 - the date that the Commission adopted its new local ownership rules - should be given priority in any processing of multiple applications. Such a procedure will best accommodate the concerns of various commenters. For instance, the NAB, ALTV, PCC and Tribune Broadcasting Company ("Tribune") have all noted that pre-existing relationships should be given first priority.

6. CBS Corporation ("CBS") and Viacom, Inc. ("Viacom") have advanced a "tie-breaker" proposal using a "first-to-contract" basis but ask the Commission to make clear that entities with LMAs and non-controlling interests will not receive priority at the expense of applicants for assignment or transfer of control." (CBS Comments at p.6). Nevertheless, CBS

also states that "[t]he first-to-contract rule could be applied equally to transferees and assignees seeking to acquire a second station as well as to entities entering into attributable LMAs or acquiring non-controlling attributable interests." (CBS Comments at p. 7).

7. The "first-to-contract" proposal has no apparent public interest benefits and simply rewards those who have the funds to generate contracts more quickly than others. Moreover, the "first-to-contract" proposal could be prone to fraud.

8. CBS's real concern appears to be the fear that a broadcaster will enter into an LMA or non-controlling attributable interest in early November that will conflict with a proposed assignment or transfer filed on November 16th because the LMA or non-controlling interest will be attributable on the 16th. This fear is easily addressed by giving priority to pre-existing LMAs and non-controlling interests -- by using August 5, 1999, the date of the adoption of the new rules -- as the date by which the LMA had to be in existence. Furthermore, LMAs should have priority over non-controlling interests since LMA agreements must be filed and are ascertainable while non-controlling interests cannot be readily determined. Companies cannot make business plans based on guesses as to which other stations are the subject of non-controlling interests.

III. Any Processing Standard Must Protect Pre-Existing Station Combinations

9. Parties with pre-existing station combinations such as LMAs must be protected under the new local ownership rules since these interests become attributable upon the effective date of the rules. In addition, these parties have substantially enhanced the public interest by reviving failing stations, making investments in programming and technical equipment and adding local news and other community oriented programming.

10. Two of the commenters, UCC and the Minority Media and Telecommunications Council ("NMTC"), have proposed rather unique alternatives to the processing of applications. However, neither of these alternatives is sustainable. UCC would award points based upon an applicant's promises of additional programming and take away points if an applicant proposed to air home shopping or provided locally originated news to another station within the DMA. However, years ago, the Commission stopped using a promise vs. performance standard in processing license renewal applications, and awarding points based on promises is unfair and administratively impossible to enforce. NMTC urges the Commission to consider an applicant's proposal to spin off television stations to socially and economically disadvantaged small businesses. This proposal, however, is predicated on NMTC's assertion that the Commission "was an active co-conspirator with state governments in ... schemes to prevent minorities from obtaining the skills needed to enter the broadcasting field" (NMTC Comments, p.2 n.3) -- an assertion that has no basis in fact. NMTC's spin off scheme is simply unworkable and unenforceable since it would give applicants three years to spin off not only an existing station but an after-acquired station.

11. In sum, Sinclair believes that it has presented the most logical solution to the processing of applications under the new rules. Since the Justice Department is the entity which can best determine when antitrust considerations come into play, duopolies should be permitted subject to the decision of the Antitrust Division. This solution is the most cost-efficient to the Commission and does not foreclose applicants from spinning off stations to disadvantaged groups as urged by NMTC.

12. If the Commission does not freely permit television duopolies subject to compliance with antitrust concerns, the Commission must nevertheless give priority first to pre-existing LMAs and secondarily to pre-existing non-controlling interests (those existing prior to August 5, 1999) since these interests become attributable on the effective date of the rules. In the event that there are still mutually exclusive applications, the Commission can evaluate past benefits from the LMA or non-controlling interest in contrast to future untested promises.

IV. Conclusion

In sum, for the reasons set forth above, Sinclair Broadcast Group, Inc. urges the Commission to defer action on the proposal to use random selection until it has reviewed its new local ownership rules on reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Margie Sutton Chew, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., do hereby certify that true copies of the foregoing **"REPLY COMMENTS OF SINCLAIR BROADCAST GROPU, INC."** were sent this 12th day of October 1999, by postage pre-paid to the following:

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