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

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In the Matter of	)	
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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

ORDER ON RECONSIDERATION

Adopted: November 10, 1999 Released: November 10, 1999

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a statement.

I. BACKGROUND

1. In this *Order on Reconsideration* ("*Order*"),[1] we determine the procedures to be used to process applications filed pursuant to the *Report and Order* adopted in the above-captioned local broadcast ownership proceeding on August 5, 1999.[2] In our *Local Ownership Order*, we relaxed our local broadcast ownership rules, specifically the TV duopoly rule and radio-television cross-ownership rule, to reflect changes in the media marketplace.[3] We stated

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[1] This reconsideration on the Commission's own motion is appropriate given the pendency of petitions for reconsideration. *See Central Florida Enterprises v. FCC*, 598 F.2d 37, 48 n.51 (D.C. Cir. 1978), *cert. dismissed*, 441 U.S. 957 (1979).

[2] *Report and Order* in MM Docket Nos. 91-221 & 87-8, FCC 99-209 ("*Local Ownership Order*").

[3] Specifically, our revised TV duopoly rule permits, in certain circumstances, common ownership of two TV stations within the same local market if at least eight independently owned and operating television stations will remain in the market post-merger. In addition, waivers of the modified TV duopoly rule may be granted to permit common ownership of two TV stations in a market where fewer than eight independent TV voices will remain post-merger where one station is a "failed" or "failing" station, or where the combination will result in the construction and operation of an unbuilt station in that market.

With respect to the radio-television cross ownership rule, our revised rule permits a party to own a television station (or two television stations if permitted under our modified TV duopoly rule) and any of the following radio station combinations in the same market: (1) up to six radio stations in any market where at least 20 independent voices would remain post-merger; (2) up to four radio stations where at least 10 independent voices would remain post-merger; and (3) one radio station notwithstanding the number of independent voices in the market. In addition, in those markets where our revised rule will allow parties to own eight outlets in the form of

that "[a]pplications filed pursuant to this *Report and Order* will not be accepted by the Commission until the effective date" of the order, which will be sixty days after publication in the Federal Register.[4] We also said: "We realize that the rules adopted in this *Report and Order* could result in two or more applications being filed on the same day relating to stations in the same market and that due to the voice count all applications might not be able to be granted. We will address how to resolve such conflicts in a subsequent action."[5]

2. On September 9, 1999, we released a *Public Notice* soliciting comment on procedures for processing applications filed pursuant to the *Local Ownership Order*.[6] We stated that one approach to resolving potential conflicts would be to process applications on a first-come, first-served basis. However, we noted that the difficulties inherent in a system that would require the Commission to determine whose application was filed first on a minute-by-minute -- or indeed second-by-second -- basis weighs against that approach. Instead, we stated our belief that the most prudent, easy to administer, and fair method for determining the order in which applications filed on the same day will be processed is by random selection. We sought comment on the use of random selection to determine processing order, including our authority to use that procedure in the context of applications for transfer or assignment of existing licenses. We also sought comment on alternative methods, such as auctions or first-come, first-served.

3. After carefully reviewing the comments filed in response to the *Public Notice*,[7] we have decided to use random selection to determine the order in which the Commission will process applications filed on the same day pursuant to our revised local broadcast ownership rules. In addition, we determine herein which applications will be subject to random selection, and clarify how voices will be counted in a market (including LMAs and conditional waivers) for purposes of applying our rules. The purpose of this *Order* is to resolve only those issues necessary to commence processing applications filed pursuant to our modified rules. We have received a number of petitions for reconsideration of our *Local Ownership Order* raising other issues not addressed herein. We will address those issues in a subsequent order.

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two TV stations and six radio stations, our rules permit them to own one TV station and seven radio stations instead.

[4] *Local Ownership Order* at ¶¶ 150, 155. The *Local Ownership Order* was published in the Federal Register on September 17, 1999. Thus, our modified rules become effective November 16, 1999.

[5] *Id.* at ¶ 150.

[6] *Public Notice*, FCC 99-240, "Commission Seeks Comment on Processing Order for Applications Filed Pursuant to the Commission's New Local Broadcast Ownership Rules" (September 9, 1999).

[7] A list of parties that filed comments in response to our *Public Notice* is attached at Appendix A.

II. USE OF A LOTTERY

4. *Comments.* A number of commenters expressed concern that processing applications by random selection alone would fail to protect certain pre-existing investments or contractual relationships, including existing Local Marketing Agreements ("LMAs) and other attributable interests.[8] CBS and Viacom argued that the Commission should resolve conflicts between applications on the basis of "first to contract," whereby applications would be prioritized based on the order in which parties executed or publicly announced they have entered into definitive agreements implicating the multiple ownership rules.[9] As an alternative, the Office of Communication, Inc. of the United Church of Christ, et al. (UCC)[10] advocates the use of a point system to determine processing order that would reward applicants proposing combinations that would increase the quantity of news or educational children's programming.[11] The Minority Media and Telecommunications Council (MMTC) proposes that ties between applicants be broken by giving preference to applicants proposing to spin off television stations to socially and economically disadvantaged small businesses.[12] Tribune also urged the Commission to provide a period to permit parties to reach a settlement prior to conducting the lottery.[13]

5. Several commenters also challenged the Commission's authority to use random selection to determine application processing order. Generally, these commenters argue that Section 309(i) of the Communications Act authorizes the Commission to use lotteries only to dispose of initial applications for license, not transfer applications.[14] Moreover, these parties

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8 *See, e.g.*, ALTV Comments at 2-4; NAB Comments at 2-4; Paxson Comments at 5-9; Sinclair Comments at 3-4.

9 *See* Viacom Comments at 2; CBS Comments at 7 - 12.

10 UCC filed together with Black Citizens for a Fair Media, Center for Media Education, and the Washington Area Citizens Coalition Interested in Viewer's Constitutional Rights.

11 *See* UCC Comments at 6 - 9. UCC also argues that a point system may be the only lawful means of disposing of the applications, as mutually exclusive applicants have a right to some form of hearing. *See Ashbacker Radio Corp. v. FCC*, 326 U.S. 327, 330 (1945).

12 *See* MMTC Comments at 8-11.

13 *See* Tribune Comments at 7.

14 *See* UCC Comments at 2; Sinclair Comments at 6-8.

argue that even if 309(i) could be read to apply to transfer applications, Congress revoked any power the FCC had to use a lottery to award commercial broadcast licenses in Section 309(i)(5)(A).[15] Commenters also express the view that random selection is an abdication of the Commission's duty to make a public interest determination under Section 310(d) of the Communications Act.[16]

6. *Discussion.* After careful consideration of the alternatives, we conclude that random selection is the preferable method for determining processing order of applications filed on the same day. This approach gives equal treatment to similarly situated applicants in circumstances where not all applications will be able to be granted as a result of minimum voice counts. In addition, this method is relatively efficient and easy to administer, thereby reducing delays in Commission action. As we stated in the *Public Notice*, we believe random selection is preferable to a "first-come, first-served" approach, given the difficulties in determining which application was filed first. Moreover, a "first-come, first-served" system could initiate a "race" to Mellon Bank to file applications, and result in filers camping out to be first in line at the filing counter. Commenters who addressed this approach agreed that it would be ill-advised.[17] With respect to the concerns raised by parties regarding the treatment of existing LMAs and other interests under a random selection system, we address those concerns below in our discussion of how to calculate the number of voices in a market for purposes of applying the revised ownership rules.

7. We also believe that random selection is preferable to the other approaches suggested by commenters. A "first to contract" system would require the Commission to define the types of contracts that would receive priority (*e.g.*, written or verbal, preliminary or final agreements, etc.), raising issues of fairness and likely triggering legal challenges and lengthy delays. Both the point system proposed by UCC and the MMTC proposal to accord priority to applicants who spin off stations to disadvantaged small businesses would be difficult and time consuming to devise and apply, and would also result in potentially lengthy delays in processing applications and increase the potential for time-consuming legal challenges. Our goal in this order is to devise application processing procedures that permit rapid, fair implementation of the revised ownership rules. While the issues raised by UCC and MMTC, including the impact of consolidation on diversity and localism, are of critical importance, these issues have been

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15 *See* UCC Comments at 3-4; Paxson Comments at 4-5.

16 *See* Sinclair Comments at 8.

17 *See, e.g.*, Paxson Comments at 2 - 3.

considered by the Commission in this proceeding and addressed in the *Local Ownership Order*.[18] Moreover, before approving any application under the random selection procedures adopted herein, the Commission must continue to make the determination that grant of the application serves the public interest.

8. Finally, we continue to believe that we have authority under Sections 310(d) and 4(i)of the Communications Act to use random selection to determine the order in which the Commission processes transfer and assignment applications. In acting on transfer and assignment applications, the Commission must make a determination under Section 310(d) whether the transfer would serve the public interest, and cannot make that determination if the transfer would violate the ownership rules. In carrying out our responsibilities under Section 310(d), we have the authority to devise reasonable means to establish the processing order of transfer applications to allow us to make a public interest determination where our rules permit the grant of some but not all pending applications. Our random selection procedures to determine processing order, adopted herein, are necessary to permit the execution of our mandate under Section 310(d).

9. We disagree with those commenters who argue that random selection is an abdication of our duty to make a public interest determination under Section 310(d). The fact that Congress has specifically permitted the use of lotteries in certain contexts clearly indicates it did not consider this approach incompatible with the Commission's public interest mandate. Moreover, our use of random selection is to assign processing order only; the Commission still must make a determination under Section 310(d) that grant of the application will serve the public interest

10. We also disagree with those commenters who argue that Section 309(i)(5) of the Act revokes our authority to use lotteries in this context. Section 309(i)(5) provides that "the Commission shall not issue any license or permit using a system of random selection under this subsection after July 1, 1997," except with respect to noncommercial stations.[19] By its terms, this

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[18] For example, in its comments filed in the local ownership proceeding, MMTC raised similar concerns regarding the effect of increased concentration on diversity and new entry into broadcasting. In response to these concerns, the Commission stated in the *Local Ownership Order:* "We note that a number of parties have expressed concern about the fact that greater consolidation of ownership in broadcasting makes it more difficult for new entrants ... to enter this industry. This is particularly the case for minorities and women who are underrepresented in broadcasting. We share these concerns. The Commission has recognized the importance of promoting new entry into the broadcast industry as a means of promoting competition and diversity. Indeed, we have adopted a 'new entrant' bidding credit as part of our broadcast auction procedures ... We will monitor the effects of the relaxation of our local TV ownership rules on new entry." *Local Ownership Order* at ¶ 13 (footnotes omitted).

[19] 47 U.S.C. § 309(i)(5).

provision applies only to use of random selection for the issuance of a license or permit, and is inapplicable to the use of a lottery for determining processing order of assignment and transfer applications. We also believe that the better reading of the 1997 amendment to Section 309(i) is that the amendment did not affect the sub-section's basic scope -- situations where there is "more than one application for any initial license or construction permit."[20] In the current situation, the applications would be for transfer or assignment of an existing license, not for an initial license or permit. The fact that Congress acted in 1997 to limit Section 309(i) lotteries to noncommercial licenses does not restrict the Commission's authority to conduct a lottery pursuant to Sections 310(d) and 4(i).[21]

III. FILING PROCEDURES

11. *Comments.* A number of commenters raised issues regarding which applications would be subject to the tiebreaking procedure selected by the Commission. NAB expressed the view that pre-existing station combinations, especially grandfathered TV LMAs and radio/TV combinations granted conditionally, should be protected under the revised rules and should be considered as a single voice in determining which new station combinations are permissible under the applicable voice counts.[22] ALTV also argued that TV LMAs should be exempt from any duopoly lottery, as these stations are already considered to be a single voice.[23] Sinclair and

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[20] 47 U.S.C. § 309(i)(1).

[21] *Telecommunications Research and Action Center v. FCC*, 836 F.ed 1349 (D.C. Cir. 988) is not to the contrary. In that case, the D.C. Circuit held that the FCC did not have authority to employ a "tie-breaker" lottery in issuing initial ITFS licenses unless it did so in conformance with Section 309(i) requirements. The court held that since the tie-breaker lottery was a system of random selection encompassed by Section 309(i), it had to conform to the statutory requirements. The issue raised here -- whether the Commission has authority independent of Section 309(i) to use random selection in processing assignment and transfer applications -- was not considered in TRAC and does not appear to be foreclosed by the court's holding.

[22] *See* NAB Comments at 2 - 4. NAB would protect existing combinations even if the parties do not submit applications to convert their LMAs into permanent duopolies on the first possible filing date *(i.e.*, November 16, 1999). *Id.* at 3, n. 5.

[23] *See* ALTV Comments at 2 - 4. ALTV would exempt from the lottery both LMAs entered into prior to November 5, 1996 and therefore grandfathered under our *Local Ownership Order* and those created on or after November 5, 1996 and prior to August 5, 1999. ALTV also argues that 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. *Id.* at 2.

Paxson would also give priority to TV LMAs on the ground that these parties have made a substantial commitment to the brokered station and have often improved programming on that station.[24]

12. Other commenters also would either give priority to certain combinations or exclude certain applications from any tiebreaking procedure ultimately adopted by the Commission. Tribune would give priority in processing to applications seeking approval of combinations of pre-existing, previously non-attributable relationships that were either approved by the Commission or permitted under the old rules, and to applications proposing combinations of stations that are commonly-owned but separately operated under temporary waivers of the old rules or held in disposition trusts.[25] ABC would clarify that any tiebreaking process would not apply to applications submitted prior to the effective date of the new rules that qualify both under the previous top 25 market/30 voice waiver policy and under the new rules regardless of voice count (*e.g.*, combinations of one TV and one radio permitted in all markets regardless of voice count). Instead, ABC would process these applications in the order received.[26]

Discussion

13. *Applications Subject to Random Selection.* We will include in a lottery all transfer and assignment applications relating to stations in the same market that are filed on the same day and that must comply with a voice count under Sections 73.3555(b) and (c) of our rules for grant. Such voice count dependent applications will be assigned, by random selection, a processing priority number. These applications will be processed in order of the date filed and, among applications filed on the same day, in order of their assigned processing priority number. We will not include in a lottery, and will not assign a processing number to, applications that are not voice dependent, such as those filed pursuant to the failed, failing, or unbuilt station waivers under the revised TV duopoly rule, those filed pursuant to the failed station waiver under the revised radio/TV cross ownership rule, applications for combinations of a single television station and a single radio station in a market, as well as radio-only combinations not implicating the radio/TV cross ownership rule. Such applications will be processed in due course.

14. For each application filed with the Commission, it will be necessary to determine the relevant market, whether the application is voice dependent, and whether the application

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24 See Sinclair Comments at 3 - 4; Paxson Comments at 5 - 9.

25 *See* Tribune Comments at 5 - 6.

26 *See* ABC Reply Comments at 5.

implicates the TV duopoly or radio/TV cross ownership rule. Assignment of processing priority numbers will proceed more rapidly if all of this information is stated in the application or transmittal letter. The Commission staff will issue a public notice with further details regarding the lottery, including the method by which numbers will be selected, as well as further information regarding application processing.

15. *Application Processing.* In processing voice count dependent applications, the Commission will reduce the relevant voice count by: (1) all voice and non-voice count dependent applications pending or granted at the time the voice count dependent application is filed, and (2) all non-voice count dependent applications filed on the same day as the voice count dependent application. Thus, for example, in processing an application for a radio/TV combination filed November 16, 1999, the Commission will consider all radio-only applications filed prior to November 16, 1999 and still pending as of that date, all radio-only applications granted as of that date, as well as any radio-only application, any combination involving a single TV and a single radio station, or any failed, failing, or unbuilt station waiver filed on November 16 that implicates the same market. For purposes of processing the November 16 application, the staff will presume that all pending voice and non-voice count dependent applications and all non-voice count dependent applications filed the same day implicating the same market will be granted. If this presumption precludes grant of the November 16 voice count dependent application, that application will be held until final action on the conflicting application(s) has been taken. If the conflicting application(s) is ultimately denied, the staff will proceed to process the November 16 voice count dependent application. If more than one voice count dependent application was filed on November 16 and was held pending processing of the non-voice count dependent application(s), the Commission will use random selection to determine processing order for such applications.

16. We believe that reducing the voice count by prior grants and applications, and by non-voice count dependent applications (*e.g.*, those filed pursuant to the failed, failing, and unbuilt station waivers, applications for a single radio and single TV station combination, and radio-only applications not implicating the radio/TV cross ownership rule) filed on the same day as a voice count dependent application, best advances our goal in the *Local Ownership Order* of protecting competition and diversity by maintaining voice count floors (*e.g.*, a minimum of 8 TV voices post-grant to obtain a TV duopoly and a minimum of 10 or 20, depending on the size of the combination, radio, TV, newspaper, and cable voices post-grant to obtain a radio/TV combination) in local markets. While we envisioned in the *Local Ownership Order* that voice counts could drop below the floor as a result, for example, of combinations involving failed, failing, or unbuilt stations, by accounting for the potential impact of these non-voice count dependent applications on the number of voices in the market the voice count floors are more likely to be maintained. We believe that these processing procedures strike an appropriate balance between maintaining a minimum number of voices in the market and establishing

certainty with respect to the number of stations available in the market at a given time. Combinations of a single TV and a single radio, which can be obtained in any market and are not voice count dependent, also would reduce the voice count for same-day or subsequently filed voice count dependent applications. We stated in our *Local Ownership Order* that the service benefits and efficiencies achieved from the joint ownership and operation of a single television/single radio combination in local markets further the public interest and outweigh the cost to diversity in these instances; thus, we allowed these combinations in all markets regardless of voice count.

17. *Calculation of Voices.* The FCC's forms require applicants for transfer or assignment of license to certify that, at the time of filing, the application complies with all multiple ownership rules. In order to certify compliance with the voice count components of our revised ownership rules, applicants should determine ownership of relevant media and the existence of any pending applications affecting their market by consulting FCC records and widely recognized, commercially available data sources such as Nielsen Media Research, Arbitron, BIA Companies, Broadcasting & Cable Yearbook, TV Factbook, and Bacon's media directories. Applicants should deviate from the data supplied by these sources only where they have actual knowledge, or could reasonably be charged with knowledge, that the data are in error or are incomplete or outdated in a material respect. Applicants must make a reasonable effort to verify the accuracy of this information and to resolve any conflict in data obtained from different sources.[27]

18. *TV LMAs and Conditional Radio/TV Waivers.* Any LMA attributable under our rules in effect on November 16, 1999, and that was entered into prior to August 5, 1999, the adoption date of the *Local Ownership Order,* will be considered to be attributable to the owner of the brokering station for purposes of the voice count determination. These two stations will thus be considered as a single voice in the market. The effect of this determination is that stations involved in a TV LMA will have the first chance to convert to a duopoly in the market, ahead of any other voice count dependent application.[28] This result is consistent with our determination in the *Local Ownership Order* not to include in our count of independently owned broadcast stations those that are brokered pursuant to an attributable same-market LMA. We concluded that the brokering station has a significant degree of influence over the brokered station's operations and programming such that the latter should not be counted as an independent source

[27] For example, BIA data generally reflect as granted ownership combinations sought in applications still pending before the Commission.

[28] Similarly, attributable radio LMAs will also be considered a single voice in applying our revised radio/TV cross ownership rule.

of viewpoint diversity.[29]

19. Although applications to convert a TV LMA to ownership will be considered ahead of any voice count dependent application in the same market filed on the same day, the Commission will consider first, before such applications, the impact on the number of voices of any non-voice count dependent application filed for the same market on the same day. In addition, as with other voice count dependent applications, the Commission will also consider first the impact on the number of voices in the market of any previously filed voice or non- voice count dependent application, and any previous grant. As we stated above, we believe that prior consideration of such applications and grants is consistent with our goal in the *Local Ownership Order* to preserve the voice count floors in local markets in order to preserve competition and diversity.

20. In some cases, parties to an LMA may not be able to make the requisite voice count showing to convert the LMA to ownership if the number of voices in the market is below the voice count minimum under our revised rules. This result is consistent with our determination in the *Local Ownership Order* that stations involved in TV LMAs may apply for a duopoly, but must comply with our revised rules.[30] Where TV LMAs cannot make the requisite voice count showing to convert to ownership, the LMA may be able to convert pursuant to one of the waiver criteria adopted in the *Local Ownership Order*. Where conversion to ownership is not possible, TV LMAs may take advantage of the grandfathering and transitional relief accorded in the order.

21. TV LMAs entered into on or after August 5, 1999, and on or before November 16, 1999, will not be considered to reduce the number of voices in a market. As a number of commenters pointed out, giving priority in processing to TV LMAs entered into after adoption of our new rules but before their effective date would unfairly prejudice entities required to wait until the effective date of the rules to file assignment and transfer applications. Entities with such interests may file an application to convert to ownership on or after the effective date of the

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29 *See Local Ownership Order* at ¶ 67 and note 117; ¶ 111, note 167.

30 With respect to stations with non-grandfathered TV LMAs, we stated that such stations "could, of course, apply for a TV duopoly under our new rule or waiver criteria, just as any other station owner in the market could. Applications based on a waiver may be based on circumstances as they existed at the time just prior to the parties entering into the LMA." *Local Ownership Order* at ¶ 142. With respect to grandfathered TV LMAs, we stated that "the parties to an LMA may seek, just as any other applicant, to form a duopoly ... under our new rule and waiver policies. A showing based on voice counts must meet our new rule at the time the showing is filed; a showing based on a waiver may be based on the circumstances existing just prior to the parties entering into the LMA." *Local Ownership Order* at ¶ 147.

rules. If such applications are filed on the same day as other voice count dependent applications in the same market, the Commission will use random selection to determine the processing order. Interests not converted to ownership will be considered to have been created as of the effective date of the new rules. Where such interests do not comply with our revised rules, entities will be given a year from the effective date of our new rules (November 16, 1999) to divest.[31]

22. Stations commonly owned by a single entity under a conditional waiver of the radio/TV cross ownership rule will also be considered as a single voice in the market. Thus, as with TV LMAs, entities with a conditional waiver will have the first chance to convert to ownership in the market, ahead of any other voice count dependent application. In our *Local Ownership Order*, we directed conditional waiver grantees to file with the Commission within sixty days of publication of the order in the Federal Register, that is by November 16, 1999, a showing sufficient to demonstrate their compliance or non-compliance with our revised radio/TV cross ownership rule.[32] We will treat such showings demonstrating compliance as applications to convert the waiver to permanent ownership, and will treat any filings made before November 16, 1999 as filed on November 16, 1999. Conditional waiver grantees will be treated in the same fashion as parties to a TV LMA entered into prior to August 5, 1999. Thus, although applications to convert conditional waivers to ownership will be considered ahead of any voice count dependent application in the same market filed on the same day, the Commission will consider first, before applications seeking to convert conditional waivers to ownership, the impact on the number of voices of any non-voice count dependent application filed for the same market on the same day. In addition, as with other voice count dependent applications, the Commission will also consider first the impact on the number of voices in the market of any previously filed voice or non-voice dependent application, and any previous grant. Where conditional waivers can be converted to ownership, the Mass Media Bureau will replace the conditional waiver with permanent approval of the relevant assignment or transfer of license. Where a showing based on voice counts does not qualify for ownership, entities with a conditional waiver may also apply for a failed station waiver and may also take advantage of the grandfathering relief accorded in the *Local Ownership Order*.

23. *Settlement.* The Commission will issue a public notice for each market listing all voice count dependent applications filed on the same day that propose station combinations in the market. Applicants will be given a limited period in which to identify for the staff any other

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[31] This is consistent with the period provided in our attribution *Report and Order* for divestiture of non-grandfathered attributable interests that do not comply with the multiple ownership rules. *See Report and Order* in MM Docket Nos. 94-150, 92-51, & 87-154, FCC 99-207 (August 5, 1999) at ¶ 171.

[32] *Local Ownership Order* at ¶ 123.

application eligible to be included on the list (*e.g.*, any other application filed on the same day as those listed in the notice that proposes a combination implicating the same market). The public notice will also specify a period during which applicants on the list may reach a universal settlement; that is, a settlement that results in grant or dismissal of all applications identified as eligible to participate in the lottery. Any such settlement agreement must comply with all Commission regulations. If no universal settlement is reached during the settlement period, applications for that market will be assigned a processing priority number by random selection. We believe that permitting universal settlements will serve the public interest by permitting processing of an application(s) without random selection, thereby speeding Commission action on the application. We will not accept settlements involving fewer than all eligible applicants for the market. Partial settlements do not facilitate processing as random selection is still required to determine the processing order.

IV. ADMINISTRATIVE MATTERS

24. *Paperwork Reduction Act of 1995 Analysis*. This *Order on Reconsideration* has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new reporting requirements on the public.

25. *Supplemental Final Regulatory Flexibility Act Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. § 601 *et seq.*, the Commission's Final Regulatory Flexibility Act Analysis (FRFA) in the August 5, 1999 *Local Ownership Order* was attached as Appendix A to that order. This *Order on Reconsideration* has no significant economic impact on small entities beyond that described in the discussion of voice tests in the August 5, 1999 FRFA.

26. *Ordering Clauses.* Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 4(i) & (j), 303(r), 308, 310 and 403 of the Communications Act of 1934, 47 U.S.C. §§ 154(i) & (j), 303(r), 308, 310 and 403, as amended, this *Order on Reconsideration* IS ADOPTED.

27. As the issues resolved herein affect applications that will be filed on November 16, 1999, the effective date of the *Local Ownership Order*, IT IS FURTHER ORDERED that, pursuant to 5 U.S.C. § 553(d)(3), upon good cause shown, this *Order on Reconsideration* will become effective upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDIX A

Comments filed in response to *Public Notice*

Association of Local Television Stations, Inc. (ALTV)
CBS Corporation
Minority Media and Telecommunications Council (MMTC)
National Association of Broadcasters (NAB)
Office of Communication, Inc. of the United Church of Christ, Black Citizens for a Fair Media, Center for Media Education, Washington Area Citizens Coalition Interested in Viewer's Constitutional Rights (UCC)
Paxson Communications Corporation (Paxson)
Sinclair Broadcast Group, Inc. (Sinclair)
Tribune Broadcasting Company (Tribune)
Viacom Inc. (Viacom)

Reply Comments

ABC, Inc.
CBS Corporation
Minority Media and Telecommunications Council (MMTC)
National Association of Broadcasters (NAB)
Office of Communication, Inc. of the United Church of Christ, Black Citizens for a Fair Media, Center for Media Education, Washington Area Citizens Coalition Interested in Viewer's Constitutional Rights (UCC)
Paxson Communications Corporation (Paxson)
Sinclair Broadcast Group, Inc. (Sinclair)
Tribune Broadcasting Company (Tribune)
Viacom Inc. (Viacom)

Dissenting Statement of Commissioner Harold W. Furchtgott-Roth

Order on Reconsideration, *In the Matter of Review of the Commission's Regulations Governing Television Broadcasting and Television Satellite Stations Review of Policy and Rules,* MM Docket Nos. 91-221, 87-8.

This Order on Reconsideration deals with the practical implementation -- and theoretical implications -- of ownership rules premised on the necessity of counting "voices" in a market. For the reasons that follow, I cannot vote in favor of its adoption.

As I said in the original Order, "I am troubled by the concept of counting 'voices.' The enterprise of counting 'voices' in a market strikes me as akin to counting angels on the head of a pin." Dissenting Statement of Commissioner Harold W. Furchtgott-Roth, Report & Order, *In the Matter of Review of the Commission's Regulations Governing Television Broadcasting and Television Satellite Stations Review of Policy and Rules,* MM Docket Nos. 91-221, 87-8, (Aug. 5, 1999). The problem with counting angels on the head of a pin is not just that they are small, but that they tend to dance around. "Voices" move in and out of existence and, significantly for instant purposes, their number can be affected by this Commission's resolution of an application to transfer broadcast licenses.

The number of voices in a market can be artificially constricted or expanded depending on what view one takes of potential government action in this area -- that is, what one presumes about pending applications that are theoretically grantable. Should all pending applications be deemed granted, or should only granted applications be considered to actually lower the number of voices in a market? I do not purport to have the answers to these questions. I do know, however, that had the Commission not adopted a "voice" test it would not now find itself in this procedural morass.

While the Bureau and the Commission have made admirable efforts to untangle the processing issues presented by the new ownership rules, I fear that we have not yet begun to understand the full range of conflicting ownership claims that will be asserted in the processing scheme and the seemingly absurd results that the scheme will produce for some applicants. In particular, I am concerned about the effect of the processing priorities established today on parties that now hold properties under conditional grants of authority from the Commission.

In short, because I would not premise ownership rights on the number of "voices" present in a market at a given point in time, I cannot support this further implementation of that system. I think, for the reasons given above, that the system is simply unworkable and will likely lead to the abrogation of ownership rights based on seemingly arbitrary factors.