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December 6, 1999

By Hand

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Mass Media Bureau
445 12th Street, SW
Washington, DC 20554

Re: Rio Grande Broadcasting Co.
MM Docket No. 90-380

Dear Ms. Roman Salas:

Enclosed for filing are an original and four (4) copies of two related petitions in this matter, namely:

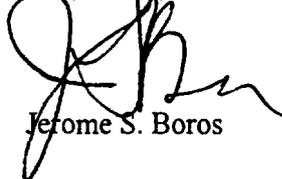
1. Petition For Declaratory Ruling That Channel 247A Has Been Unconditionally Allocated To Rio Grande, Puerto Rico; and
2. Petition For Stay of Proceedings.

Also enclosed is a copy of this letter for stamping and return to the courier.

Please address any responsive communications to:

Jerome S. Boros, Esq.
Robinson Silverman Pearce Aronsohn & Berman LLP
1290 Avenue of the Americas
New York, NY 10104
212-541-1072

Very truly yours,



Jerome S. Boros

Encs. (2)

cc w/encs (2): All persons listed on Certificate of Service
L. Scanlon
J. Crutchfield

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DEC 10 1999

FCC MAIL ROOM

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	MM Docket No. 90-380
)	
RIO GRANDE BROADCASTING CO.)	File No. BPH-880815MV
)	
ROBERTO PASSALACQUA)	File No. BPH-880816NN
)	
IRENE RODRIGUEZ DIAZ de McCOMAS)	File No. BPH-880816OR
)	
UNITED BROADCASTERS COMPANY)	File No. BPH-880816OW
)	
)	
For Construction Permit For a New FM Broadcast)	
Station On Channel 247A, Rio Grande,)	
Puerto Rico)	

To: The Commission

PETITION FOR STAY OF PROCEEDINGS

Irene Rodriguez Diaz de McComas ("McComas"), by her attorneys, pursuant to Section 1.43 of the Commission's Rules, hereby requests the Commission to further stay proceedings in this docketed case, pending a ruling on the attached Petition For Declaratory Ruling That Channel 247A Has Been Unconditionally Allocated To Rio Grande, Puerto Rico. In support hereof, McComas shows as follows:

1. For the reasons set out in the Petition, the Commission should stay any further proceedings involving the Rio Grande applications, including particularly, Auction No. 28, scheduled for March 21, 2000, insofar as it applies to the instant applications. A stay is appropriate under the standards set out in Virginia Petroleum Jobbers Assn. v. FPC, 259 F2d 921, 925 (DC Cir. 1958) and Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F2d 841, 843 (DC Cir. 1977). Those standards - supportive of a stay - are:

"(i) the petitioner has a substantial prospect of prevailing on the merits; irreparable injury will otherwise occur, due to the unavailability of an

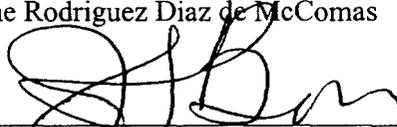
adequate legal remedy; and the threatened injury outweighs any possible injury to the opposing party; and (ii) issuing a stay will not disservice the public interest."¹

2. Here a stay would very much advance the Congressional policy of maximizing revenue to the public fisc through auctions, and there is not a single reason why the relief sought by McComas should not be allowed. The requested relief certainly will create no cognizable injury to any party to this proceeding and, arguably, will benefit all parties by removing a stumbling block to the effective auction procedures envisioned by the Commission. Absent a stay, McComas, at least, will suffer irreparable injury, for at this juncture, as the Petition recites, she is unable properly to formulate a bid for the channel, a unique facility and she has no redress - damages are unavailable to her in this governmental proceeding.

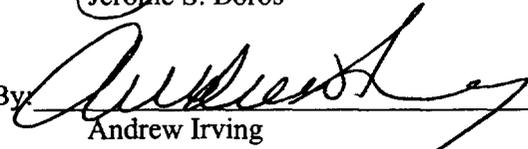
WHEREFORE, the request for a stay should be allowed, and the Commission should stay any auction until a reasonable period of time (to permit financing) following its disposition of the Petition.

Respectfully submitted,

Irene Rodriguez Diaz de McComas

By: 

Jerome S. Boros

By: 

Andrew Irving

ROBINSON SILVERMAN PEARCE ARONSOHN &
BERMAN LLP
1290 Avenue of the Americas
New York, New York 10104
(212) 541-2000

Her Attorneys

Dated: December 6, 1999

¹ Calling Card Validation Practices LECS, 73 R.R.2d 733, 735 (1993).

CERTIFICATE OF SERVICE

I, Anna McNamara, a secretary in the law offices of Robinson Silverman Pearce Aronsohn & Berman LLP, do hereby certify that on this 6th day of December, 1999, I caused to be mailed a copy of the Petition for Stay of Proceedings to the following:

Richard Swift, Esq.
Attorney for United Broadcasters Company
Tierney & Swift
2175 K. Street, N.W., Suite 350
Washington, D.C. 20037

Roy F. Perkins, Esq.
Attorney for Roberto Passalacqua
1724 Whitewood Lane
Herndon, Virginia 22076

Timothy K. Brady, Esq.
Attorney for Rio Grande Broadcasting, Co.
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Mass Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554



Anna McNamara

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Applications of)	MM Docket No. 90-380
)	
RIO GRANDE BROADCASTING CO.)	File No. BPH-880815MV
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)	
UNITED BROADCASTERS COMPANY)	File No. BPH-880816OW
)	
For Construction Permit For a New FM Broadcast)	
Station On Channel 247A, Rio Grande,)	
Puerto Rico)	

To: The Commission

**PETITION FOR DECLARATORY RULING THAT
CHANNEL 247A HAS BEEN UNCONDITIONALLY
ALLOCATED TO RIO GRANDE, PUERTO RICO**

Irene Rodriguez Diaz de McComas ("McComas"), by her attorneys, pursuant to Section 1.2 of the Commission's Rules, hereby requests the Commission to issue a Declaratory Ruling that Channel 247A, the channel at issue in this proceeding, has been assigned to Rio Grande, Puerto Rico, without any restriction upon the Channel's utilization¹. In support hereof, McComas shows as follows:

I.

Factual And Procedural Background

1. The history of this proceeding since its initiation by a cut-off notice of July 15, 1988 (Report No. W-44), is fully set forth in Appendix A hereto. For immediate purposes, it

¹ Simultaneously herewith, McComas is requesting the Commission to stay any further proceedings relating to the above applications, including Auction No. 28, pending disposition of the instant request.

is sufficient to point out that the Petitioner, McComas, and her three competitors, Rio Grande Broadcasting Co. (“RGB”), United Broadcasters Company (“United”) and Roberto Passalacqua (“Passalacqua”) filed mutually exclusive applications on August 16, 1988 for a permit to construct an FM station on Channel 247A, Rio Grande, Puerto Rico (“Channel”). The four applicants participated in an intensive hearing proceeding, pursuant to Hearing Designation Order, 5 FCC Rcd 5442 (1990) and the Policy Statement On Comparative Broadcast Hearings, 1 FCC 2d 393, 5 RR 2d 1501 (1965). However, the comparative standards subsequently were invalidated and a Freeze Order on further proceedings was imposed (Appendix A, at ¶ 4), and ultimately in 1998, the Commission determined to use competitive bidding procedures to decide amongst pre-July 1997 mutually exclusive broadcast applications, including the Rio Grande proposals (Auction Order, 13 FCC Rcd. 15920). On November 19, 1999, the Commission gave public notice that the Rio Grande applications would be consolidated for an Auction scheduled for March 21, 2000. Report No.AUC-99-28 (Auction No. 28)(Appendix B) An opening bid of \$250,000.00 was prescribed. The Commission did not set forth the basis for the prescribed opening bid.

II.

Basis for Requested Relief

2. In the cut-off notice of July 15, 1988 (Appendix C)² the Commission states:

“There exists the potential for interference between this allotment [i.e., Channel 247A] and a recently authorized station on Channel 247C in the British Virgin Islands. The United States is not a party to any bilateral agreement with Great Britain concerning FM Broadcast stations in the

² Two other timely applications subsequently were dismissed with prejudice and thus are no longer participating in the proceeding.

British Virgin Islands. However, Channel 247A at Rio Grande may be subject to deletion or replacement.”

This constitutes the Commission's last words on the subject other than the Hearing Designation Order, which repeated the caveat about full utilization of the Channel (Appendix D). Over the following nine years, the Commission never has addressed the issue nor has it, in any way, clarified the Channel's status. While the parties were engaged in a comparative hearing prior to the Freeze Order (Appendix A at ¶4) and for so long as the Freeze Order remained in effect, this omission did not adversely affect the parties or the public interest. However, the situation now is otherwise, given that an auction is scheduled which seeks to choose among the applications on the basis of maximizing the economic return to the Government. For such auction to be fruitful, it is necessary for the Commission to clarify the questions pertaining to Channel 247A's utilization in order to enable the applicants to arrange necessary financing and to formulate optimum bids. Certainly, the existing uncertainty impairs a maximum yield in derogation of the public interest benefit of “assigning the frequency to the eligible party that values it the most.” See Public Notice, 12 FCC Rcd 22363, 22371 (1997).

3. In addition, the indeterminacy concerning the utility of Channel 247A is unfair to each of the applicants. They are asked to bid for “a pig in the poke”, in invidious contrast to other applicants in the scheduled auction and in violation of “equal protection” rights.

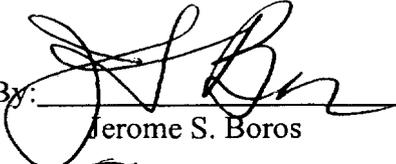
4. Over the last several months, McComas has sought to resolve the uncertainty surrounding the Channel, to McComas's satisfaction, utilizing the services of a radio consulting engineer firm, as well as relying on other sources. The upshot is that McComas finds no barrier to full utilization of Channel 247A at Rio Grande, but she has been unable to find any Commission writing to this effect, and, absent such a writing, McComas is disadvantaged in

definitively determining the market value of the Channel and is crippled in terms of being able to formulate a business plan to submit to prospective financiers of McComas's auction bid.

5. This situation calls for prompt remedial action by the Commission. The appropriate remedy is through a declaratory order and, for the foregoing reasons, McComas submits that the Commission should promptly determine the status of the Channel 247A Rio Grande allotment and, if the Channel is useable, without any condition, the Commission should issue a declaratory ruling to that effect.

Respectfully submitted,

Irene Rodriguez Diaz de McComas

By: 
Jerome S. Boros

By: 
Andrew Irving

ROBINSON SILVERMAN PEARCE ARONSOHN
& BERMAN LLP
1290 Avenue of the Americas
New York, New York 10104
(212) 541-2000

Her Attorneys

Dated: December 6, 1999

Factual And Procedural Background

1. McComas, Rio Grande Broadcasting Co. (“RGB”), United Broadcasters Company (“United”) and Roberto Passalacqua (“Passalacqua”) filed mutually exclusive applications for the permit to construct Channel 247A, Rio Grande, Puerto Rico.³ McComas’ application, as filed on the August 16, 1988 “cut-off” date contained her original signature on her Equal Employment Opportunity Program, but only facsimile-transmitted signatures on the transmitter site certification and ultimate certification pages. The application was accepted for tender and accepted for filing and there was no mention of the signature issue in the Hearing Designation Order issued in 1990, reported at 5 FCC Rcd 5442.

2. In February 1991, some six months after the Hearing Designation Order, Passalacqua moved to dismiss McComas’ application, because of the absence of an original signature on the original application’s certification page. The Administrative Law Judge dismissed the application.⁴ With the support of the Mass Media Bureau, the Review Board reversed the Administrative Law Judge.⁵ The Review Board observed that McComas had furnished original signature pages on August 17, 1988, one day after the application had been filed. The Review Board concluded that the decisions in Mary Ann Salvatoriello, 6 FCC Rcd 4705, 69 R.R.2d 881 (1991) (“Salvatoriello”) and Josephine M. Rodriguez d/b/a Cielo Communications, 3 FCC Rcd 6752 (MM Bur. 1988) (“Cielo”) had established that since the text of the Equal Employment Opportunity Certification and the ultimate certification in Section VII

³ Two other applicants were dismissed with prejudice and are no longer participating in the proceeding.

⁴ Memorandum And Opinion, FCC 91 M-2432, released August 6, 1991.

⁵ Rio Grande Broadcasting Co., 6 FCC Rcd 5519, 69 R.R.2d 1234 (1991).

of the application form were so similar, the presence of an original signature on the EEO certification is “essentially the same as the unsigned Section VII certification.” 6 FCC Rcd at 5519. The Review Board also relied upon its previous ruling in George Henry Clay, 5 FCC Rcd 317, 318 (Review Board 1990) to the effect that the requirements of the so-called “Hard Look Order”⁶ concerning matters such as original signatures on application forms constitute processing guidelines that “are intended to be applied at the initial staff review stage” but should not apply thereafter once a hearing process has begun. Neither RGB, United nor Passalacqua then sought Commission review of the Review Board’s decision.

3. Following six days of hearings in December 1991, Administrative Law Judge Gonzalez granted RGB’s application and denied the competing applications on comparative grounds.⁷ Although McComas’ adversaries had vigorously cross-examined her concerning her execution of her application, the Administrative Law Judge’s opinion contained no finding of impropriety. On exceptions, the Review Board ordered that the permit be awarded to United rather than to RGB and McComas and further ordered that Passalacqua’s application be dismissed because of the absence of a viable site and Passalacqua’s failure to demonstrate good cause for amending to a viable site.⁸ McComas, RGB and Passalacqua each filed an application for review with the Commission.

4. Proceedings in comparative proceedings then were stayed by Public Notice, 9 FCC Rcd 6689 (1994) (“Freeze Order”), and the Commission has not acted on the requests for review and all proceedings in this case have been frozen. On August 5, 1997

⁶ Report And Order (Dkt. No. 84-750), 50 Fed. Reg. 19945 (1985), recon. denied, 50 Fed. Reg. 43157 (1985), reprinted in 58 R.R.2d 776 (1985).

⁷ Rio Grande Broadcasting Co., 7 FCC Rcd 7682 (1992).

⁸ Rio Grande Broadcasting Co., 8 FCC Rcd 6256, 73 R.R.2d 1388 (1993).

President Clinton signed the Balanced Budget Act of 1997, P.L. No. 105-33, 11 Stat. 251 (1997) which, inter alia, added a new § 309(l) to the Communications Act to authorize the Commission to conduct auctions to dispose of pending comparative broadcast initial licensing cases such as the instant proceeding.

5. By its Auction Order, 13 FCC Rcd 15920 (1998) (“Auction Order”), the Commission determined to use competitive bidding procedures for all cases involving pre-July 1, 1997 applications, including the approximately twenty cases (including the instant proceeding) that progressed at least through Initial Decision by an Administrative Law Judge before the Freeze Order. Auction Order at ¶¶52-55. The Commission specifically identified United and RGB as commentors who urged instead that comparative hearing processes be used to resolve such cases. Id. at nn.53 and 54. The Commission further decided that in such cases the Commission “will permit all pending applicants to participate in the auction, without regard to any unresolved hearing issues . . . as to the basic qualifications of a particular applicant. We will do so regardless of the number of remaining applicants or whether the adverse resolution of outstanding basic qualifying issues would eliminate all but one applicant.” Id. at ¶89. Again, the Commission explicitly rejected the argument that basic qualifying issues should be decided prior to the auction, identifying United as a commentor who proposed this rejected position. Id. at ¶90 and n.82.

6. On November 9, 1998, two of the four remaining applicants, RGB and United, requested that the Commission approve their bilateral settlement agreement (the “Settlement Request”). The proposed settlement provided for the merger of United and RGB into a single applicant and approval of the agreement was conditional upon the disqualification of McComas’s and Passalacqua’s applications. McComas and Passalacqua opposed the Settlement Request, on the ground that the Auction Order required that all parties be permitted to participate

in an auction for the permit before the Commission ruled on the disqualification issues pending before the Freeze Order.

7. The Commission agreed with McComas and Passalacqua and dismissed the Settlement Request on May 25, 1999 stating that since the settlement agreement was executed after February 1, 1998, pursuant to the Commission's adopted competitive bidding procedures, all applicants not finally denied or dismissed by the Commission could participate in the auction. See, Rio Grande Broadcasting, FCC 99-111 (rel. May 25, 1999).

8. On June 24, 1999, RGB and United filed a Petition for Reconsideration requesting that the Commission reconsider the dismissal of the Settlement Request. On September 28, 1999, the Commission denied the Petition for Reconsideration. See, Memorandum Opinion and Order, FCC 99-261, adopted September 28, 1999.

9. The Commission followed up on its September Auction by an Order, released November 19, 1999. In that Order, the Commission, among other things, consolidated the four Rio Grande applications for Auction, scheduled for March 21, 2000.



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 12th Street S.W.
Washington, D.C. 20554

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DA 99-2594
November 19, 1999

SUPPLEMENTAL CLOSED BROADCAST AUCTION SCHEDULED FOR MARCH 21, 2000

COMMENT SOUGHT ON RESERVE PRICES OR MINIMUM OPENING BIDS AND OTHER AUCTION PROCEDURAL ISSUES

Report No. AUC-99-28-A (Auction No. 28)

By this Public Notice, the Mass Media Bureau ("MMB") and the Wireless Telecommunications Bureau ("WTB") (collectively, "Bureaus") announce the auction of certain AM, FM, LPTV and TV broadcast construction permits to commence March 21, 2000. All spectrum to be auctioned is the subject of pending, mutually exclusive applications for referenced broadcast services for which the Commission has not approved settlement agreements obviating the need for an auction. In Auctions No. 25 and No. 27, recently completed, the Commission auctioned similar groups of construction permits. This Supplemental Closed Broadcast Auction shall dispose of the remaining broadcast applications not included in those earlier Auctions. This shall include mutually exclusive applications for full service AM, FM and television applications that were subject to the comparative freeze¹ pending resolution of the issues raised by *Bechtel II*.² In addition, included in the

¹ Public Notice, *FCC Freezes Comparative Hearings*, 9 FCC Rcd 1055 (1994), modified, 9 FCC Rcd 6680 (1994), further modified, 10 FCC Rcd 12182 (1995).

² *Bechtel v. FCC*, 10 F.3d 875, 878 (D.C. Cir. 1993).

Supplemental Closed Broadcast Auction are certain mutually exclusive LPTV and TV translator displacement relief applications.³ Pursuant to the *Broadcast First Report and Order*,⁴ participation in the auction will be limited to those applicants identified in this Public Notice and applicants will be eligible to bid only on those construction permits for which they previously filed long form applications (FCC Forms 301 or 349).⁵

Construction permits will be auctioned for each of the mutually exclusive applicant groups ("MX Groups") identified on Attachment A. In some, but not all, of the MX Groups listed on Attachment A, a "daisy chain" of mutual exclusivity exists whereby applications are directly mutually exclusive with certain applications in the MX Group but not others ("Daisy Chain MX Groups"). A "daisy chain" occurs when two or more non-table, site-based applications propose service areas that do not directly overlap, but are linked together into a chain by the overlapping proposal(s) of other(s). In such cases, the potential exists to grant more than one application and issue more than one construction permit per MX Group and remain consistent with the Commission's separation requirements relating to site-based services. The identification of "daisy chains" on Attachment A is provisional in nature, since the final configuration of groups cannot be ascertained until after the filing of short-form (FCC Form 175) applications, at which point mutual exclusivity for auction purposes arises. At that time, a final identification and enumeration of "daisy chain" MX Groups will be made and a public notice will be released providing this information ("Status PN"). It is possible that some MX Groups provisionally identified here as constituting a daisy chain may, after the short form filing deadline, become directly mutually exclusive. In such cases(s), the proposal set forth below in this notice pertaining to applications that are directly mutually exclusive with each other ("Direct MX Groups") become applicable.

³ See *Public Notice, Low Power Television and Television Translators: Mutually Exclusive Displacement Applications*, Mimeo No. 85299 (rel. Sept. 2, 1998); see also *Public Notice, Commission Postpones Initial Date for Filing TV Translator and Low Power TV Applications for Displacement Channels*, Mimeo No. 82914 (rel. April 16, 1998).

⁴ The Commission adopted service and competitive bidding rules for mass media services, including standard broadcast (AM), frequency modulation (FM), full service commercial television (TV) and Instructional Television Fixed Service (ITFS). Also adopted were rules for the secondary services of low power television (LPTV), FM translator and television translator. See *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, First Report and Order* in MM Docket No. 97-234, GC Docket No. 92-52 and GEN Docket No. 90-264, 13 FCC Red 15920 (1998) ("*Broadcast First Report and Order*") and *Order on Reconsideration of the Matter of the Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, FCC 99-74, rel. April 20, 1999 ("*Broadcast Reconsideration Order*").

⁵ See *Broadcast First Report and Order* at ¶¶ 81, 105-109.

Attachment A lists the MX Groups categorized on a service-by-service basis, accompanied by the respective reserve prices/minimum opening bids and upfront payments. The groups involving provisional daisy chain situations are noted. All MX Groups identified in Attachment A have been subject to competition through the opening and closing of the period for filing competing applications through the two-step cut-off list procedures, or through an application filing window. Pursuant to the *Broadcast First Report and Order*, in those specific situations where both non-commercial and commercial applicants for full power stations filed mutually exclusive long-form applications for non-reserved band channels, auctions shall not be conducted at this time and these applications are not included on Attachment A.

The total number of long form applications being disposed of in this proceeding is 60. These long form applications are grouped together in a total of 14 MX groups, 8 of which are provisional daisy chain groups.

I. Reserve Price or Minimum Opening Bid

The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses or construction permits are subject to auction (*i.e.*, because the applications are mutually exclusive), unless the Commission determines that a reserve price or minimum bid is not in the public interest.⁶ Consistent with this mandate, the Commission has directed the Bureaus to seek comment on the use of minimum opening bids and/or reserve prices prior to the start of each broadcast auction.⁷ This is consistent with policy applied in earlier spectrum auctions, including the recently completed Closed Broadcast Auctions.⁸ The Commission has concluded that either or both of these mechanisms may be employed for auctions and has delegated the requisite authority to make determinations regarding the appropriateness of employing either or both.⁹

⁶ Section 3002(a), Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251 (1997) ("Balanced Budget Act"); 47 U.S.C. § 309(j)(4)(F). The Commission's authority to establish a reserve price or minimum opening bid is set .2104(c) and (d).

⁷ See Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, FCC 97-413, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 454-455, ¶ 141 (1998) ("*Part 1 Third Report and Order*") and *Broadcast First Report and Order*, ¶¶ 127-128.

⁸ Auctions No. 25 and No. 27 concluded October 8, 1999, after 35 rounds and 15 rounds, respectively.

⁹ *Broadcast First Report and Order*, 13 FCC Rcd at 15967, ¶127.

Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum acceptable bid price set at the beginning of a multiple round auction. It too constitutes a minimum amount below which *no bids* are accepted and is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction.

In anticipation of these auctions and in light of the Balanced Budget Act, the Bureaus propose to establish minimum opening bids for Direct MX Groups and reserve prices for the Daisy Chain MX Groups. The Bureaus believe that use of minimum opening bids, which have been utilized in other simultaneous, multiple round auctions,¹⁰ is an effective practice for conducting the auction of the Direct MX Groups, since the competitive bidding design we propose for those groups features simultaneous, multiple rounds. For the Daisy Chain MX Groups, on the other hand, where a single round format is proposed, we will utilize published reserve prices, which will function in a single round context much like the minimum opening bids in the multiple round format.

Minimum opening bids for the Direct MX Groups will help to regulate the pace of the auction. The proposed minimum opening bids were determined by taking into account various factors related to the efficiency of the auction and the potential value of the spectrum. For the television construction permits, we have based the proposed minimum opening bids upon the type of service that will be offered, market size, industry cash flow data and recent broadcast transactions. For the radio construction permits, we have based the proposed minimum opening bids upon the service and class of facility that will be offered, the population covered by the proposed facilities for which parties intend to bid and recent broadcast transactions.

Comment is sought on this proposal. If commenters believe the reserve prices and minimum opening bids proposed in Attachment A will result in a substantial number of unsold construction permits, or, in particular instances, do not constitute reasonable amounts, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with specific valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. Commenters should detail any alternative method they propose for valuing given spectrum, providing examples and citations for each part of their formula. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bids or reserve prices.

II. Other Auction Procedural Issues

¹⁰ See, e.g., Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices, DA 97-2147, Order, 12 FCC Rcd 16354 (1997); see, also, *Broadcast Reconsideration Order*, ¶ 134.

The Balanced Budget Act requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed. . . before issuance of bidding rules, to permit notice and comment on proposed auction procedures. . ." ¹¹

Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific provisions that will govern the day-to-day conduct of an auction, the Commission directed the Bureaus, under their existing delegated authority, ¹² to seek comment on a variety of auction-specific issues prior to the start of each auction. ¹³ Pursuant to our delegated authority as contained in the *Broadcast First Report and Order*, we seek comment on the following issues.

a. Auction Sequence, License Groupings and Auction Design

The Commission proposes two separate auction designs to award these construction permits, one for the Daisy Chain MX Groups and one for Direct MX Groups. For the Daisy Chain MX Groups, the Commission will employ an electronic single round auction to determine the winner(s). We have concluded that the disposition of these construction permits in this manner is most appropriate because of the complexity of the overlapping nature of the permits in these groups.

For Direct MX Groups, the Commission will employ an electronic simultaneous multiple round auction format. We have concluded that the disposition of these construction permits in this manner is the most administratively appropriate and allows bidders to utilize the same competitive bidding design option successfully employed in the recently concluded Closed Broadcast Auction.

We believe that the use of these designs furthers the public interest by enhancing efficient

¹¹ Balanced Budget Act, § 3002(a)(E)(i).

¹² See Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding, WT Docket No. 97-82, FCC 97-60, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5677, ¶ 16 (1997) ("*Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*") ("We also clarify that pursuant to Section 0.131 of our rules, the Chief, Wireless Telecommunications Bureau, has delegated authority to implement all of the Commission's rules pertaining to auctions procedures.") See also, *Broadcast First Report and Order*, ¶ 134.

¹³ *Part 1 Third Report and Order*, 13 FCC Rcd at 448, ¶ 124. The Commission directed the Bureau to seek comment on specific mechanisms related to day-to-day auction conduct including, for example, the structure of bidding rounds and stages, establishment of minimum opening bids or reserve prices, minimum accepted bids, initial maximum eligibility for each bidder, activity requirements for each stage of the auction, activity rule waivers, criteria for determining reductions in eligibility, information regarding bid withdrawal and bid removal, stopping rules, and information relating to auction delay, suspension or cancellation. *Id.* ¶ 125.

spectrum usage. We seek comment on these proposals.

b. Structure of Bidding Rounds

For the Daisy Chain MX Groups, we propose that there will be a single round in which each bidder must place a bid that meets or exceeds the established reserve price. Bidders will enter their bids in whole dollar amounts. The determination of the winning bidder in each of the Daisy Chain MX Groups shall be made by finding the set of bids on non-overlapping coverage areas that accrue to the greatest amount. For example, consider the case of an MX Group consisting of a "daisy chain" of three potential bidders (Bidders 1, 2 and 3) interested in three construction permits in the MX Group (respectively Construction Permits A, B and C) such that A is MX'ed with B and B is MX'ed with C. This means that either A and C can both be assigned or B can be assigned, but not A and B, B and C or A, B and C. In order for Bidder 2 to win construction permit B, its bid would have to exceed the combined bids of Bidders 1 and 3 on construction permits A and C, respectively. All bids will be time-stamped and in the case of tie bids, the first complete combination of bids placed first-in-time shall be considered the winning bid combination.

For the Direct MX Groups, we propose a single stage, simultaneous multiple round auction. In order to ensure that the auction closes within a reasonable period, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or use an activity rule waiver. We propose that, in each round of the auction, a bidder desiring to maintain its current eligibility is required to be active on construction permits encompassing one hundred (100) percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used, see Section e.).

We seek comments on these proposals.

c. Reserve Prices and Minimum Accepted Bids

For the Daisy Chain MX Groups, each bidder must place a bid that meets or exceeds the established reserve price as indicated in Attachment A. Bidders will enter their bids in whole dollar amounts.

For the Direct MX Groups, the bid level will begin at the established minimum opening bid as indicated in Attachment A. Once there is a standing high bid on a construction permit, a bid increment will be applied to that construction permit to establish a minimum acceptable bid for the following round. We propose to set a minimum 10% increment. This means that a new bid placed by a bidder must be at least 10% greater than the previous bid received on that

construction permit. The Bureaus retain the discretion to change the methodology for determining the minimum bid increment if they determine the circumstances so dictate. Bidders will enter their bids as multiples of the bid increment (*i.e.*, with a 10% bid increment, a bid of 1 increment will place a bid 10% above the previous high bid, a bid of 2 increments will place a bid 20% above the previous high bid).

We seek comment on these proposals.

d. Initial Maximum Eligibility for Each Bidder

Bidders will be required to submit an upfront payment for each construction permit on which they are qualified for and interested in placing a bid. The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned, taking into account such factors as efficiency of the auction process and the potential value of the spectrum.¹⁴ Eligibility for participation depends on whether an applicant has timely tendered its upfront payment and has otherwise complied with all of the Commission's rules relating to participation. Bidders will be required to submit an upfront payment for each construction permit on which they are qualified for and interested in placing a bid. With these guidelines in mind, we propose the schedule of upfront payments contained in Attachment A to this Public Notice. We seek comment on this proposal.

e. Activity Rule Waivers and Reducing Eligibility

For the Daisy Chain MX Groups, because of the single round format, activity rule waivers and reducing eligibility are not applicable.

For the Direct MX Groups, use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

The automated auction system assumes that bidders with insufficient activity at the close of a round would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding round where a bidder's activity level is below the minimum required unless: (1) there are no more activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility thereby meeting the minimum requirements.

¹⁴ See *Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 12 FCC Rcd at 5697-98, ¶ 16 (1997); see also *Broadcast First Report and Order*, ¶¶ 129-134.

We propose that a bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver, must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility would be permanently reduced to bring the bidder into compliance with the activity rules as described above. Once eligibility has been reduced, a bidder would not be permitted to regain its lost bidding eligibility.

We propose that a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open, under the simultaneous stopping rule. The submission of a proactive waiver cannot occur after a bid has been submitted in a round and will preclude a bidder from placing any bids later in that round.

We propose that each bidder be provided with five activity rule waivers that may be used in any round during the course of the simultaneous multi-round auction as set forth above. We seek comment on these proposals.

f. Bid Removal and Bid Withdrawal

For the Daisy Chain MX Groups, we propose the following bid removal and bid withdrawal procedures. Before the close of the bidding period, a bidder has the option of removing any bids placed. By using the remove bid function in the software, a bidder may effectively "unsubmit" any of its bids placed in the single round auction. A bidder removing a bid is not subject to withdrawal payments. Bid withdrawals after the close of the bidding round are not applicable to the single round auction. We seek comment on this proposal.

For the Direct MX Groups, we propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments.

Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions.¹⁵ We seek comment on these bid removal and bid withdrawal procedures.

¹⁵ See 47 C.F.R. § 1.2104(g); 1.2109.

In the *Part 1 Third Report and Order*, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons, including to delay the close of the auction for strategic purposes. The WTB, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent strategic delay of the close of the auction or other abuses. The Commission stated that the WTB should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market it finds that a bidder is abusing the Commission's bid withdrawal procedures.¹⁶

Applying this reasoning, we propose to limit each bidder in the auction to withdrawals in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive strategic purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules.

We seek comment on these proposals.

g. Stopping Rule and Waivers

For the Daisy Chain MX Groups, the Bureaus propose to conduct a single round of bidding and declare the auction over at the conclusion of this bidding period. The Bureaus propose a single, two hour bidding period. The Bureaus retain the discretion to increase or decrease this time limit by announcement before the auction if circumstances so dictate. We seek comment on this proposal, and, specifically, whether a bidding period of greater or less than two hours should be employed.

For the Direct MX Groups, the Bureaus propose to employ a simultaneous stopping approach. The Bureaus have discretion to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.¹⁷ A simultaneous stopping rule means that all construction permits remain open until the first round in which no new acceptable bids, proactive waivers or withdrawals are received. After the first such round, bidding closes simultaneously on all construction permits. Thus, unless circumstances dictate otherwise, bidding would remain open on all construction permits until bidding stops on every construction permit.

¹⁶ Part 1 Third Report and Order, 13 FCC Rcd at 460, ¶ 150.

¹⁷ 47 C.F.R. § 1.2104(e) and 73.5001(b).

The Bureaus seek comment on a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all construction permits after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any constructions on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureaus further seek comment on whether this modified stopping rule should be utilized.

We propose that the Bureaus retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

Finally, we propose that the Bureaus reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureaus invoke this special stopping rule, it will accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. The Bureaus propose to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity.

We seek comment on these proposals.

h. Information Relating to Auction Delay, Suspension or Cancellation

We propose that, by Public Notice or by announcement during the auction, the Bureaus may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.¹⁸ In such cases, the Bureaus, in their sole discretion, may elect to: resume the auction starting from the beginning of the current bidding period; resume the auction starting from some previous bidding period; or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

¹⁸ See 47 C.F.R. § 1.2104(i).

We seek comment on this proposal.

III. Conclusion

Comments in response to this Public Notice are due on or before December 6, 1999 and Reply Comments are due on or before December 16, 1999. To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, Washington, D.C. 20554. In addition, parties must submit one copy to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth Street, SW, Room No. 4-A760, Washington, DC 20554.

Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room in the Commission's headquarters at 445 Twelfth Street, SW, Washington, D.C. 20554.

For further information concerning this proceeding, contact Shaun Maher, Video Services Division, Mass Media Bureau at (202) 418-1600, Lisa Scanlan, Audio Services Division, Mass Media Bureau at (202) 418-2700 or Bob Reagle, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (717) 338-2807.

- FCC -

Attachment A

AM Radio Construction Permit Minimum Opening Bids/Reserve Prices and Upfront Payments

MX Group	Location	Channel/FX	Bidding Units	Upfront Payment	Minimum Opening Bid/Reserve Price	Applicants	Daisy Chain	Case File Numbers	Call Sign
AM1	Honolulu, HI	1130B	75,000	\$75,000.00	\$75,000.00	John Hutton Corporation	No	BP-961024AB	NEW
	Honolulu, HI	1130B	75,000	\$75,000.00	\$75,000.00	George S. Flinn, Jr.	No	BP-971103AC	NEW
AM2	Baltimore, MD	680B	20,000	\$20,000.00	\$20,000.00	WCBM Maryland, Inc.	Yes	BP-971222AC	WCBM
	Poolesville, MD	700B	20,000	\$20,000.00	\$20,000.00	Elijah Broadcasting Corporation	Yes	BP-960829AA	WWTL
	Henderson, NC	700B	20,000	\$20,000.00	\$20,000.00	Citicasters, Co.	Yes	BP-971222AB	WCHO

FM Radio Construction Permit Minimum Opening Bids/Reserve Prices and Upfront Payments

MX Group	Location	Channel/FX	Bidding Units	Upfront Payment	Minimum Opening Bid/Reserve Price	Applicants	Daisy Chain	Case File Numbers
FMI	Rio Grande, PR	247A	250,000	\$250,000.00	\$250,000.00	Rio Grande Broadcasting	No	BPH-880815MV
	Rio Grande, PR	247A	250,000	\$250,000.00	\$250,000.00	Roberto Passalacqua	No	BPH-880816NN
	Rio Grande, PR	247A	250,000	\$250,000.00	\$250,000.00	Irene Rodriguez Diaz De McComas	No	BPH-880816OR
	Rio Grande, PR	247A	250,000	\$250,000.00	\$250,000.00	United Broadcasters Company	No	BPH-880816OW

Attachment A

Video Service Construction Permit Minimum Opening Bids/Reserve Prices and Upfront Payments

MX Group	Location	Channel /FX	Bidding Units	Upfront Payment	Minimum Opening Bid/Reserve Price	Applicants	Daisy Chain	Case File Numbers
PST1	El Dorado, Arkansas	43	100,000	\$100,000.00	\$100,000.00	Agape Church, Inc.	No	BPCT-960628KF
	El Dorado, Arkansas	43	100,000	\$100,000.00	\$100,000.00	KB Communications, Inc.	No	BPCT-960710KW
	El Dorado, Arkansas	43	100,000	\$100,000.00	\$100,000.00	Sioux Falls 64, LLC	No	BPCT-960930KR
	El Dorado, Arkansas	43	100,000	\$100,000.00	\$100,000.00	KM Communications, Inc.	No	BPCT-960930KV
	El Dorado, Arkansas	43	100,000	\$100,000.00	\$100,000.00	United Television, Inc.	No	BPCT-961001LE
	El Dorado, Arkansas	43	100,000	\$100,000.00	\$100,000.00	Cardinal Broadcasting Corp.	No	BPCT-961001XN
SST1	Glide, Oregon	49	1,000	\$1,000.00	\$1,000.00	3 Angels Broadcasting Network, Inc.	No	BPTTL-JG0601ZX
	Roseburg, Oregon	49	1,000	\$1,000.00	\$1,000.00	Trinity Broadcasting Network	No	BPTT-980601VD
SST2	Knoxville, Tennessee	46	1,000	\$1,000.00	\$1,000.00	Trinity Broadcasting Network	Yes	BPTT-JG0601PJ
	Knoxville, Tennessee	46	1,000	\$1,000.00	\$1,000.00	Dwight R. Magnuson	Yes	BPTTL-980601RL
	Knoxville, Tennessee	45	1,000	\$1,000.00	\$1,000.00	Dwight R. Magnuson	Yes	BPTTL-980601TJ
SST3	Yorktown, Virginia	53	60,000	\$60,000.00	\$60,000.00	JBS, Inc.	Yes	BMPTTL-JG0601MN
	Virginia Beach, Virginia	52	60,000	\$60,000.00	\$60,000.00	B.N. Viswanath	Yes	BPTTL-JG0601XW
	Hampton, Virginia	53	60,000	\$60,000.00	\$60,000.00	Lockwood Broadcasting, Inc.	Yes	BPTTL-JG0601ZI
	Hampton, Virginia	53	60,000	\$60,000.00	\$60,000.00	LWWI Broadcasting, Inc.	Yes	BPTTL-980601UH
	Suffolk, Virginia	52	60,000	\$60,000.00	\$60,000.00	LWWI Broadcasting, Inc.	Yes	BMPTTL-980601UI
SST4	Rochester, New York	35	30,000	\$30,000.00	\$30,000.00	Tony J. Fant	Yes	BMPTTL-JG0601AG
	Buffalo, New York	36	30,000	\$30,000.00	\$30,000.00	Tony J. Fant	Yes	BMPTTL-JG0601AH
	Rochester, New York	36	30,000	\$30,000.00	\$30,000.00	Metro TV, Inc.	Yes	BPTTL-980601QQ
SST5	Wichita Falls, Texas	46	10,000	\$10,000.00	\$10,000.00	Barbara Sharfstein	Yes	BPTTL-940415L4
	Wichita Falls, Texas	60	10,000	\$10,000.00	\$10,000.00	James W. Satterfield	Yes	BPTTL-JD0415BJ
	Ardmore, Oklahoma	60	10,000	\$10,000.00	\$10,000.00	Buddy L. Watson	Yes	BPTTL-JD0415NZ
	Seminole, Oklahoma	60	10,000	\$10,000.00	\$10,000.00	Bryan Westbrook	Yes	BPTTL-JD0415SE
	Wichita Falls, Texas	61	10,000	\$10,000.00	\$10,000.00	Terri Harris	Yes	BPTTL-JE0415FB

Attachment A

Video Service Construction Permit Minimum Opening Bids/Reserve Prices and Upfront Payments

MX Group	Location	Channel /FX	Bidding Units	Upfront Payment	Minimum Opening Bid/Reserve Price	Applicants	Daisy Chain	Case File Numbers
SST6	Eagle Pass, Texas	52	60,000	\$60,000.00	\$60,000.00	American Christian TV System	Yes	BPTTL-820616TQ
	Eagle Pass, Texas	52	60,000	\$60,000.00	\$60,000.00	Minerva Rodriguez Frias	Yes	BPTTL-EO0307PJ
	Eagle Pass, Texas	52	60,000	\$60,000.00	\$60,000.00	Jose Armando Tamez	Yes	BPTTL-GC0308XV
	Eagle Pass, Texas	52	60,000	\$60,000.00	\$60,000.00	Lidia Rodriguez	Yes	BPTTL-GD0308XI
	Eagle Pass, Texas	51	60,000	\$60,000.00	\$60,000.00	American Lo-Power TV Network	Yes	BPTTL-GK0308PJ
	Eagle Pass, Texas	49	60,000	\$60,000.00	\$60,000.00	American Lo-Power TV Network	Yes	BPTTL-GK0308PK
	Eagle Pass, Texas	50	60,000	\$60,000.00	\$60,000.00	Jo Ann's Balloon Boutique, Inc.	Yes	BPTTL-GQ0308TT
	Eagle Pass, Texas	50	60,000	\$60,000.00	\$60,000.00	Raul Francisco Rivas	Yes	BPTTL-GU0308RK
SST7	Eagle Pass, Texas	44	60,000	\$60,000.00	\$60,000.00	Mike A. Mendoza	Yes	BPTTL-GE0308NW
	Uvalde, Texas	43	60,000	\$60,000.00	\$60,000.00	Evarista Romero	Yes	BPTTL-GG0308LQ
	Uvalde, Texas	45	60,000	\$60,000.00	\$60,000.00	Mike A. Mendoza	Yes	BPTTL-GJ0308ME
	Uvalde, Texas	45	60,000	\$60,000.00	\$60,000.00	Evarista Romero	Yes	BPTTL-GJ0308VE
	Eagle Pass, Texas	45	60,000	\$60,000.00	\$60,000.00	American Lo-Power TV Network	Yes	BPTTL-GK0308PL
	Eagle Pass, Texas	43	60,000	\$60,000.00	\$60,000.00	American Lo-Power TV Network	Yes	BPTTL-GK0308PM
	Uvalde, Texas	43	60,000	\$60,000.00	\$60,000.00	Mike A. Mendoza	Yes	BPTTL-GK0308RC
	Eagle Pass, Texas	44	60,000	\$60,000.00	\$60,000.00	Jo Ann's Balloon Boutique, Inc.	Yes	BPTTL-GU0308SG
	Eagle Pass, Texas	44	60,000	\$60,000.00	\$60,000.00	Raul Francisco Rivas	Yes	BPTTL-HD0308RT
	Uvalde, Texas	43	60,000	\$60,000.00	\$60,000.00	Evangelina Garcia Garza	Yes	BPTTL-HO0308VN
SST8	Twin Falls, Idaho	28	8,000	\$8,000.00	\$8,000.00	Marcie Hillyard	Yes	BPTTL-JD0415EA
	Twin Falls, Idaho	44	8,000	\$8,000.00	\$8,000.00	Marcie Hillyard	Yes	BPTTL-JD0415EB
	Twin Falls/Jerome, Idaho	29	8,000	\$8,000.00	\$8,000.00	Idaho Independent Television, Inc.	Yes	BPTTL-JD0415CW
	Twin Falls, Idaho	29	8,000	\$8,000.00	\$8,000.00	Kevan Hillyard	Yes	BPTTL-JE0415MC
SST9	Summerville, S. Carolina	26	1,000	\$1,000.00	\$1,000.00	Towers, Inc.	No	BMPTTL-JG0601EV
	Charleston, S. Carolina	26	1,000	\$1,000.00	\$1,000.00	Charles S. Namey	No	BMPTTL-980601JR
SST10	Bakersfield, California	20	20,000	\$1,000.00	\$1,000.00	3 Angels Broadcasting Network, Inc.	No	BPTTL-980601VG
	Bakersfield, California	19	20,000	\$1,000.00	\$1,000.00	Trinity Broadcasting Network	No	BPTT-980601ZL
	Bakersfield, California	19	20,000	\$1,000.00	\$1,000.00	Valley Public Television, Inc.	No	BPTT-9JG0601TQ

1ST DOCUMENT of Level 1 printed in FULL format.

FEDERAL COMMUNICATIONS COMMISSION

[Report No. W-44]

53 FR 26864

July 15, 1988

Window Notice for the Filing of FM Broadcast Applications

Release: July 8, 1988.

TEXT: Notice is hereby given that applications for vacant FM broadcast allotment listed below may be submitted for filing during the period beginning July 8, 1988 and ending August 16, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process. n1

n1 There exist the potential for interference between this allotment and a recently authorized station on Channel 247C in the **British Virgin Islands**. The United States is not a party to any bilateral agreement with Great Britain concerning FM Broadcast stations in the **British Virgin Islands**. However, Channel 247A at Rio Grande may be subject to deletion or replacement.

Channel -- 247A

Homewood . . . AL

Globe . . . AZ

Litchfield . . . CT

Chiefland . . . FL

Salyersville . . . KY

Orange . . . MA

Essexville . . . MI

Natchez . . . MS

Lebanon . . . OH



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Oak Harbor . . . OH

Spangler . . . PA

Rio Grande 1 . . . PR

Parsons . . . TN

Channel -- 247C2

Longview . . . TX

Channel -- 247C

Pecos . . . TX

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-15975 Filed 7-14-88; 8:45 am]

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proposed service area. Although RGB and McComas have filed such statements, they are deficient. RGB has not listed printed media which have significant circulation or are of particular interest to minorities and women. McComas has not listed: minority and women's organizations to encourage the referral of qualified minority and women applicants; employment services which refer job candidates without regard to their race, color, religion, national origin, or sex; area schools and colleges with minority and women enrollments; or media which have significant circulation or viewership or are of particular interest to minorities and women. Accordingly, RGB and McComas will be required to file an amended EEO program with the presiding Administrative Law Judge, within 30 days of the release of this Order, or an appropriate issue will be specified by the Judge.

6. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the applicants below have been unsuccessful. Accordingly, since no determination has been received as to whether the antennas proposed by Fuerte, Passalacqua, and RGBI would constitute hazards to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

7. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to United in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.
2. To determine with respect to RGB whether the applicant is financially qualified.
3. To determine whether there is a reasonable possibility that the tower heights and locations proposed by Fuerte, RGBI, and Passalacqua would constitute hazards to air navigation.
4. To determine which of the proposals would, on a comparative basis, best serve the public interest.
5. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED. That the Informal Objection filed by Jorge E. Berrios IS GRANTED TO THE EXTENT INDICATED HEREIN and IS DENIED IN ALL OTHER RESPECTS.

11. IT IS FURTHER ORDERED, That in accordance with paragraph 3 hereinabove, United shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

12. IT IS FURTHER ORDERED. That the petition for leave to amend filed by McComas IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

13. IT IS FURTHER ORDERED. That within 30 days of the release of this Order, RGB and McComas shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

14. IT IS FURTHER ORDERED. That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

15. IT IS FURTHER ORDERED. That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

16. IT IS FURTHER ORDERED. That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

17. IT IS FURTHER ORDERED. That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

¹ We note that a grant of any application in this proceeding is without prejudice to whatever action, if any, the Commission may take in light of the ongoing negotiations with the British Virgin Islands. See e.g., *Public Notice*, Report No. W-44, released July 8, 1988.

² Jorge E. Berrios submitted a December 27, 1988 letter "on behalf of numerous citizens" opposing construction of a broadcast tower in the vicinity of Aguas Buenas, Puerto Rico. According to the letter, the affected residents are concerned about radiation and "other inconvenients" [sic]. The letter will be considered as an informal objection to the captioned applications. However, inasmuch as all applicants except United meet applicable environmental standards, and inasmuch as the Commission's jurisdiction does not extend to other, unspecified concerns, the informal objection will be granted to the extent indicated in paragraph 3 below, and denied in all other respects.

CERTIFICATE OF SERVICE

I, Anna McNamara, a secretary in the law offices of Robinson Silverman Pearce Aronsohn & Berman LLP, do hereby certify that on this 6th day of December, 1999, I caused to be mailed a copy of the Petition for Declaratory Ruling That Channel 247A Has Been Unconditionally Allocated to Rio Grande, Puerto Rico, to the following:

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