

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

- Implementation of Section 309(j) of the) MM Docket No. 97-234
- Communications Act – Competitive Bidding)
- for Commercial Broadcast and Instructional)
- Television Fixed Service Licensees)
-)
- Reexamination of the Policy Statement) GC Docket No. 95-52
- on Comparative Broadcast Hearings)
-)
- Proposals to Reform the Commission’s) GEN Docket No. 90-264
- Comparative Hearing Process to Expedite)
- the Resolution of Cases)

To: Chief, Audio Services Division, Mass Media Bureau
Reference No. 1800B3-TSN

REPLY

Pursuant to Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, Anchor Broadcasting Limited Partnership (“Anchor”) respectfully submits this Reply to the “Opposition to Petition for Reconsideration” (“Opposition”) filed by Galaxy Broadcasting on April 24, 2000 in the above-captioned proceeding. In the Opposition, Galaxy opposed Anchor’s request that the Audio Services Division reconsider its refusal to exempt Anchor temporarily from paying the balance due on the winning bid that Anchor submitted in the recently completed Closed Broadcast Auction (“Auction”), or in the alternative to waive, briefly, the requirement that Anchor pay the balance of its winning bid. In response to the arguments and allegations made by Galaxy in the Opposition, Anchor submits the following:

I. The Opposition Fails to Distinguish Anchor’s Position from that of a Applicant Faced with a Petition to Deny

2. In the Opposition, Galaxy argues that Anchor should receive different treatment than a party faced with a petition to deny because, unlike a party faced with a petition to deny, no doubt has been cast as to Anchor’s qualifications as a potential licensee.

3. Anchor agrees that it is qualified to hold the Selbyville permit. Further, Anchor understands Galaxy’s argument concerning the alleged distinction between Anchor’s position and that of an applicant faced with a petition to deny. What Anchor cannot understand, and what Galaxy cannot provide, is the reasoning to support use of this distinction as a basis for disparate treatment.

4. That no challenge has been made to Anchor’s qualifications as a licensee has no rational relation to, and provides no rational basis for, forcing Anchor to pay for its permit when an applicant subject to a petition to deny need not. Each faces fundamentally the same risk: that they will ultimately not receive the construction permit. A mere recitation of a distinction between the two, and labeling it a “sufficient rationale” for disparate treatment cannot suffice. Galaxy fails explain why the distinction constitutes a “sufficient rationale.” Anchor submits that Galaxy cannot provide such an explanation because none exists.¹

1. Galaxy’s related arguments must fail as well. Galaxy’s contention that Anchor “assumed the risk of this uncertainty long ago, by constructing and operating the facility at issue[.]” misses the point. Anchor does not dispute that it has risked its past investment by building the station facilities. In requesting an exemption from its payment obligations, however, Anchor seeks to avoid the burden and risk of making additional future payments until such time as Anchor’s interest in the license vests free and clear. Moreover, Anchor’s knowledge of the pending court appeal when it participated in Auction 25 means nothing. Anchor’s only alternative would have been not to participate in the auction, thus ensuring that it would not win the permit. Anchor participated to ensure that it would receive the permit if the appeal was decided in its favor.

II. Anchor has not Underestimated the Scope of the Relief it Seeks

5. Galaxy next contends that granting the narrow payment exemption requested by Anchor would “undermine the integrity of the auction process by eroding all confidence in the payment deadlines established by the Commission prior to auction.”

6. Contrary to Galaxy’s claims, Anchor’s request for a temporary exemption from its payment obligations would not damage the credibility of the auction process. First, as Anchor has always contended, and as Galaxy apparently agrees, the “relief sought by Anchor relates only to its mutually exclusive application for a new FM station in Selbyville, Delaware.”² Given the unique circumstances at issue in this case, any decision in Anchor’s favor should have little precedential value. Second, the Commission’s treatment of applicants faced with a petition to deny provides a sufficient precedent for the exemption requested by Anchor. It is reasonable and rational, and hardly earthshattering, to extend the temporary payment exemption to those applicants whose permits are subject to ongoing judicial, not just administrative, proceedings.

III. The Relief Sought by Anchor Does not Harm Galaxy

7. Galaxy obliquely contends that temporarily delaying Anchor’s payment obligation would result in some form of “manifest” unfairness or injustice to competing applicants, presumably Galaxy itself. As an initial matter, Galaxy never identifies the exact nature of the claimed injustice. Galaxy does not demonstrate, or even argue, that it will be deprived of some right, or lose life, liberty or property, if the Commission temporarily extends Anchor’s payment deadline. Galaxy’s failure in this respect is hardly surprising – no such harm exists. In fact, the only arguable loss that

2. Opposition at 1, n.1. At most, the relief sought by Anchor could be extended to applicants that had completed and prevailed in comparative hearings, but whose applications were subsequently frozen -- about ten of the dozens of permits auctioned.

might arise from extending Anchor's deadline will be borne by the government, in that it would not receive Anchor's payment, and earn interest on it, for some period of time.³

8. Galaxy does claim, however that it "would have bid higher in Auction 25 if it had thought that it could forestall payment on its obligation indefinitely." As an initial matter, hopefully the Commission understands by now that Anchor is seeking a temporary, not indefinite, suspension of its payment obligation. Further, and apparently unlike Galaxy, Anchor determined its bidding strategy and calculated its bids based on what it perceived to be the value of the Selbyville permit, and nothing more. Anchor does not question that it will have to pay for the permit eventually, and has never argued otherwise – the issue is whether Anchor should be forced to pay before it holds the permit free and clear. Finally, Galaxy's argument that it would have bid higher if it had known that it could delay payment for some amount of time, and thus Anchor should be denied its request for a temporary payment exemption, makes little sense. What Galaxy did or didn't do during the auction has no bearing on when Anchor should have to pay for the permit, and Anchor should not be penalized for Galaxy's failures.

IV. Conclusion

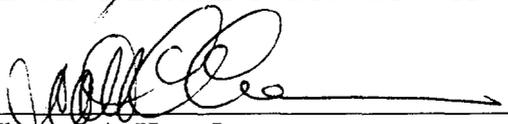
9. In light of the forgoing, Anchor reiterates its contention that it should receive a temporary exemption from its payment obligation for the Selbyville construction permit. Arguments to the contrary made by Galaxy fail both in substance and in logic, and in any event do not offer any

3. Along these lines, Anchor is unclear as to the basis for Galaxy's standing to participate in this dispute over Anchor's payment deadline. It seems that the only parties with an interest in when Anchor makes its payment to the Commission are Anchor and the Commission. Accordingly, Anchor did not serve Galaxy with the initial Petition for Declaratory Ruling. As a matter of courtesy, Anchor has served Galaxy with all subsequent filings.

valid reason for denying Anchor's request. Accordingly, Anchor submits that it should be treated in the same manner as an applicant faced with a petition to deny.

Respectfully submitted,

ANCHOR BROADCASTING LIMITED PARTNERSHIP

A handwritten signature in black ink, appearing to read 'T. Hart, Jr.', is written over a horizontal line. The signature is stylized and cursive.

-Thomas A. Hart, Jr.
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May 4, 2000

CERTIFICATE OF SERVICE

I, Scott C. Cinnamon, of the law firm of Shook, Hardy & Bacon, do hereby certify that I have on this 4th day of May, 2000 caused to be mailed by first class mail, postage prepaid, copies of the foregoing “**Reply**” to the following:

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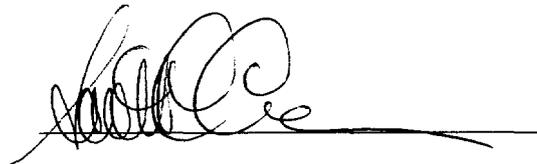
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