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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Applications of	)	MM Docket No. 87-504
	)	
Anchor Broadcasting Limited Partnership	)	File No. BPH-860917MD
	)	
Galaxy Communications, Inc.	)	File No. BPH-860918NY
	)	
Susan M. Bechtel	)	File No. BPH-860918OV
	)	
For Construction Permit For a New FM Station on Channel 250A in Selbyville, Delaware	)	

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

OPPOSITION TO PETITION FOR REVIEW

Galaxy Communications, Inc. ("Galaxy"), by its attorneys, hereby opposes the application for review (styled "Petition for Review") filed on June 22, 2000 ("Petition"), by Anchor Broadcasting Limited Partnership ("Anchor") in the above-captioned proceeding.[1] In its Petition, Anchor seeks Commission reversal of a letter ruling dated March 9, 2000 ("Letter Ruling"), wherein the Audio Services Division refused to exempt Anchor from the financial obligations Anchor incurred in the Closed Broadcast Auction ("Auction 25").

Galaxy and Anchor were the only Auction 25 participants competing for the permit for the new FM station in Selbyville, Delaware (the "Selbyville Permit"). Susan Bechtel, the

[1] As Galaxy has noted in its prior pleadings, Anchor has employed an improper caption. Anchor's petition should have been filed in the Selbyville comparative proceeding.

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third applicant, chose not to bid. Auction 25 concluded with Anchor as the high bidder. No petitions to deny were filed against Anchor's application for construction permit. Under normal auction procedures, Anchor should have paid the outstanding balance of its bid shortly thereafter. If it had done so, the Commission would have issued the Selbyville Permit to Anchor long ago. Instead, Anchor sought to defer the payment deadline.

In seeking Commission review, Anchor incorporates by reference its original Petition seeking deferral of the payment deadline and its Petition for Reconsideration. There is no need for Galaxy to respond to each point raised in those pleadings again. Instead, Galaxy incorporates by this reference the substantive arguments expressed in its Opposition to Petition for Reconsideration.

To the extent that circumstances have changed since the filing of Anchor's Petition for Reconsideration and Galaxy's opposition to the same, the current circumstances weaken Anchor's already ineffectual arguments even further.

Specifically, Anchor admits that the United States Court of Appeals has entered a judgment affirming the FCC with regard to its broadcast auction proceeding and rejecting the appeals of Mrs. Bechtel and others. *See* Petition at 5, including note 15,[2] citing *Orion Communications, Ltd. v. FCC*, Nos. 98-1424 and consolidated cases, slip op. (D.C. Cir. June

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[2] Note 15 of the instant Petition incorrectly refers to note 1 when, in fact, it is note 2 of the Petition which includes the relevant citation. However, Galaxy provides the relevant citation above.

13, 2000) (per curiam). The reader will recall that Mrs. Bechtel's appeal was the source of the extreme anxiety of which Anchor complained below. Petition for Reconsideration at 2-3.

On appeal, the Court determined that Mrs. Bechtel's objections to the auction process were not even worthy of a published opinion. Thus, the chance that the Supreme Court would grant *certiorari* is vanishingly small. The judgment of the Court of Appeals effectively dispels any certainty whether the Commission's auction procedures will survive intact. Accordingly, whoever ultimately receives the Selbyville Permit may be assured that its ownership of the authorization is not jeopardized by the litigation on which Anchor has based its request for an exemption from the FCC's payment deadline.

Ironically, Anchor previously claimed that such a judgment could be issued as soon as July, thereby making the delay which it sought inconsequential:

> Anchor seeks an extension of its payment deadline **only** until the Orion case concludes. The case is nearing completion. . .The court could hand down a decision as early as July 2000, and thus Anchor would receive little more than a three-month deferral of its payment deadline. This relatively minor accommodation by the Commission seems a reasonable cost for mitigating the risk and uncertainty faced by Anchor, and preventing the administrative nightmare of refunding payment for an authorization that was reversed on appeal.

Petition for Reconsideration at 6, emphasis added. Anchor has, *de facto*, received the entire deferral that it requested. Any further delay is unconscionable.

Now that the judgment has actually been rendered in advance of Anchor's best forecast and substantively in Anchor's favor, Anchor should no longer be allowed to employ the administrative process to delay payment of the balance of its bid. Anchor has already

misused the administrative process to achieve a substantial delay to which, as the Audio Services Division staff has already concluded, Anchor was not entitled. A continued refusal to make the promised payment is evidence that Anchor lacks the funds with which to pay the FCC, or that Anchor's participation in Auction 25 was not undertaken in good faith.

To the extent that Anchor's Petition presents any new spin on its previous arguments, Anchor emphasizes that it has participated in a long and arduous process. Petition at 10. Yet, this fact could not logically entitle Anchor to a post-facto advantage over Galaxy. Galaxy has been seeking the Selbyville permit just as long as Anchor.

In addition, even though Anchor began operation of the Selbyville station at its own risk, and assumed the possible consequences of an adverse result on appeal, Anchor now blames the Commission for all of its alleged woes. *Id.* The allegation in the Petition about Anchor's financial difficulties is not supported by any profit and loss statement or balance sheet of any kind, much less an affidavit of a person with firsthand knowledge of the facts alleged. No proof was provided that any advertiser has refused to buy a spot on the Selbyville Station merely because of some obscure litigation. Anchor's complaints on this score therefore should be disregarded.

The possibility that Anchor's alleged losses may stem from bad management is not considered; everything is the fault of the FCC. If Anchor does not want the Station, it should simply withdraw its bid. To the extent that Anchor's statement constitutes a representation that it does not hope to profit from the Selbyville facility after having bid for the Permit,

there is no reason why Anchor would submit a bid in the amount of $210,000 for the Selbyville Permit, unless Anchor never intended to honor its payment obligation.

Anchor should not be permitted to delay indefinitely the date when it must tender full payment or risk losing the Selbyville Permit to Galaxy as the next highest bidder. Now that Anchor has received the delay that it asked for, there is actually no need for action by the full Commission. The Petition for Review could, on that basis, simply be dismissed.

Even before the Commission acts on Anchor's Petition, the Division should give effect to its own Order by placing Anchor's application on a public notice calling for payment of the outstanding balance owed by Anchor.

In view of the foregoing, Galaxy requests that the Commission deny Anchor's Petition.

Respectfully submitted,

GALAXY COMMUNICATIONS, INC.

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Dated: July 7, 2000

CERTIFICATE OF SERVICE

I, Kerstin Koops Budlong, hereby certify that on this date I caused the foregoing "Opposition to Petition for Review" to be served by U.S. first class mail, postage prepaid, on the following:

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