

APR 18 2001

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Reexamination of the Comparative)
Standards for Noncommercial)
Educational Applicants)
)

MM Docket No. 95-31

To: The Commission

PETITION FOR FURTHER RECONSIDERATION

De La Hunt Broadcasting ("DeLaHunt"), by its attorney, hereby requests further reconsideration and clarification of the *Memorandum Opinion and Order*, released on February 28, 2001 in this proceeding.¹ With respect thereto, the following is stated:

As one element of the Commission's original *Report and Order* in this proceeding,² the FCC modified subsection (f) of Section 73.3555 to make clear that while "ownership limits of this section are not applicable to noncommercial FM and noncommercial educational TV stations," the attribution rules contained in Note 2 of the Rule can be applied to NCE stations. The original wording of the rule implied that with regard to NCE stations, the attribution standards would be relevant only to evaluation of mutually exclusive noncommercial educational applicants pursuant to Subpart K. On reconsideration, the Commission clarified that its reference to "Subpart K" should have been used as an example only, and stated that whenever attribution is relevant to evaluation of NCE interests, the standards of 73.3555, Note 2, will apply. FCC 01-64 at ¶ 81.³

¹ A summary of the *Memorandum Opinion and Order* was published in the Federal Register on March 19, 2001. 66 Fed. Reg. 15353.

² *Comparative Standards for Noncommercial Educational Applicants*, 15 FCC Rcd 7386 (2000).

³ The *MO&O* states that "in amending the notes to Section 73.3555," it meant to clarify that commercial attribution standards apply to NCE stations. It is to be noted that in the original *Report and Order*, subparagraph (f) of Section 73.3555 was amended, not any of the "notes" (e.g., Notes 1-10) to Section 73.3555. In the event reconsideration is issued, it is requested that this be corrected and clarified, as well, to avoid any confusion in the

No. of Copies rec'd at 4
List A B C D E

However, the wording of Section 73.3555(f) requires clarification. The Commission summarized favorably DeLaHunt's prior analysis that under Subpart G (which governs the low power FM service), that a party with an attributable interest in any broadcast station (including an NCE station) cannot own an interest in a low power FM licensee, and that under Subpart I, a party's attributable interests in any full-service broadcast station (including an NCE station) are reviewed in determining whether an applicant qualifies for an auction bidding credit⁴. In either instance, regardless of whether the applicant is a commercial or noncommercial entity, the applicant's other broadcast interests (both commercial and NCE) are examined.

Obviously, there are instances where parties to a "commercial" applicant may have interests in "NCE" licenses and licensees. The Rule as currently re-written, however, states as follows:

"...[T]he attribution standards set forth in the Notes to this section will be used to determine attribution for noncommercial FM and TV applicants, such as in evaluating mutually exclusive applications pursuant to Subpart K."

Thus, the Rule, as adopted, rather than focusing on the nature of the attributable interests, wrongly focuses on the nature of the applicant. Based upon the text of the *MO&O*, it is believed that subsection (f) of Section 73.3555 should state as follows:

...[T]he attribution standards set forth in the Notes to this section will be used to determine attribution of noncommercial FM and TV ownership interests, such as in evaluating mutually exclusive applications pursuant to Subpart K.

The difference in wording is subtle, but clarification of the language will ensure that Commission

application of the Rule as may occur in the future.

⁴ The *MO&O* incorrectly recites that interests in NCE stations are used in determining whether an applicant qualifies for a "noncommercial bidding credit." FCC 01-64 at ¶ 81. There is no such thing as a "noncommercial bidding credit." The text should have read either "commercial bidding credit" or simply "bidding credit." It is believed that this is a clerical error, but one that nevertheless should be corrected and clarified.

intent is not subverted. Once again, as De La Hunt has summarized previously, with respect to applications filed under Subpart G of the Commission’s Rules, the Commission clearly stated that *any* applicants (*i.e.*, *regardless* of whether they are “non-commercial educational” or commercial applicants) owning other cognizable broadcast interests are not eligible to apply for or own an LPFM license, and the Commission is using the attribution rules to assess whether an applicant has any cognizable “other broadcast interests.”⁵ Thus, the language of Section 73.3555(f) clearly should apply in the evaluation of the broadcast interests of both commercial as well as NCE applicants, not simply “noncommercial educational FM and TV applicants” as the rule currently reads. Similarly, the commercial auction rules also focus generally on the existence of all other broadcast interests. Section 73.5007(b) prohibits a winning bidder from receive a new entrant bidding credit if it has an attributable interest in “any existing media or mass communications” in the same area. 47 C.F.R. § 73.5007(b). Under Section 73.5008(b) of the broadcast auction rules, a “medium of mass communications” is defined as “a daily newspaper; a cable television system; or a license or construction permit for a television broadcast station, an AM or FM broadcast station, a direct broadcast satellite transponder, or a Multipoint Distribution Service station.” The intent of those rules, as well, were to provide bidding credits to entities holding “no or few mass media licenses.” As the Commission stated:

Providing bidding credits to entities holding no or few mass media licenses

⁵ *Creation of Low Power Radio Service*, FCC 00-19, ¶¶ 29, 47 (Jan. 27, 2000) (“no broadcaster or other media entity, or any party with an attributable interest in them, can hold any attributable interest in an LPFM licensee”; “we will apply rules similar to the existing commercial attribution rules to determine a licensee’s compliance with the ownership limits set forth above”); Section 73.858 (“ownership and other interests in LPFM station permittees and licensees will be attributed...in accordance with the provisions of § 73.3555....”); Section 73.860 (“[n]o authorization for an LPFM stations shall be granted to any party if the grant of that authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator station or low-power television station, or any other media subject to broadcast ownership restrictions”).

will promote opportunities by minorities and women consistent with congressional intent without implicating prematurely the constitutional issues raised in ¶188. While such an approach may not be as direct and fine-tuned as measures we may ultimately adopt after further development of the record, we **believe a bidding credit for entities who have no or few other media interests** will work to give these groups the additional opportunities intended by Congress, in furtherance of the statutory objectives.

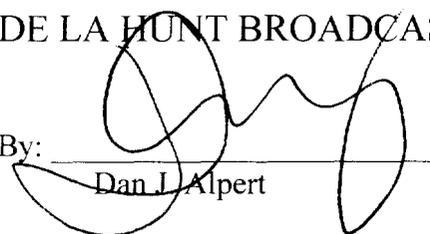
Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, 13 C.R. 279, 331 ¶ 189 (1998) (emphasis added). Again, the focus was not on the nature of the applicant “entity” but the existence and cross-ownership broadly of other “mass media licenses.” Again, the ownership of other cognizable NCE broadcast interests affects the qualification for bidding credits *regardless* of whether the “applicant” is a “non-commercial educational FM [or] TV applicant” or a commercial applicant.

The Rule, as redrafted, does not precisely match Commission intent as expressed in prior Commission Reports and Orders. It properly should be correctly, as suggested above.

WHEREFORE, it is respectfully requested that this Petition be granted.

Respectfully requested,

DE LA HUNT BROADCASTING

By: 

Dan J. Alpert

Its Attorney

*The Law Office of Dan J. Alpert
2120 N. 21st Rd.
Suite 400
Arlington, VA 22201
(703) 243-8690*

April 18, 2001