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October 3, 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Magalie R. Salas, Esquire
Secretary
Federal Communications Commission
Room TW-B204
445 12th Street, S.W.
Washington, DC 20554

Re: ACME Communications, Inc.
Notice of *Ex Parte* Presentation
Reallocation and Service Rules for the 698-746
MHz Spectrum Band (Television Channels 52-59)
GN Docket No. 01-74

Dear Ms. Salas:

ACME Communications, Inc. ("ACME"), acting pursuant to Section 1.1206(b)(2) of the Commission's rules, hereby provides notice of a permitted oral *ex parte* presentation in the above-referenced proceeding. On October 2, 2001, representatives of ACME met with members of the staff of the FCC's Wireless Telecommunications Bureau and Mass Media Bureau to address certain matters pertaining to the FCC's treatment of pending proposals for new NTSC stations to operate on channels 52-58. The discussion focused on ACME's position as summarized in the attached outline.

Attending the meeting on behalf of ACME were Lew Paper and the undersigned.

The following FCC personnel were in attendance: David Furth, Senior Counsel, Wireless Telecommunications Bureau; Paul D'Ari, Chief, Policy and Rules Branch, Wireless Telecommunications Bureau; William Huber, Wireless Telecommunications Bureau; Michael Rowan, Wireless Telecommunications Bureau; Wayne Leighton, Wireless Telecommunications Bureau; and Keith Larson, Associate Chief for Engineering, Mass Media Bureau.

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October 3, 2001
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Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,

DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP

Attorneys for ACME Communications, Inc.

By: 
Andrew S. Kersting

Enclosure

cc: Mr. David Furth (w/ encl.) (FCC) (by hand)
Mr. Paul D'Ari (w/ encl.) (FCC) (by hand)
Mr. William Huber (w/ encl.) (FCC) (by hand)
Mr. Michael Rowan (w/ encl.) (FCC) (by hand)
Mr. Wayne Leighton (w/ encl.) (FCC) (by hand)
Mr. Keith Larson (w/ encl.) (FCC) (by hand)

ACME COMMUNICATIONS, INC.
PENDING NTSC PROPOSALS FOR CHANNELS 52-59
October 2, 2001

ACME Communications Inc. ("ACME") is the proposed or potential grantee of construction permits for new NTSC television stations on Channels 52-59 in three (3) communities: Lexington, Kentucky; Portland, Oregon; and Richmond, Virginia. It is ACME's understanding that the Mass Media Bureau is prepared to process the respective Petitions for Rulemaking for the Lexington and Portland proposals and, if otherwise satisfied with the comments and related agreements, to grant the related construction permits. As explained in greater detail below, the Mass Media Bureau may also be in a position to process the Richmond proposal.

Before proceeding, however, the Mass Media Bureau needs to determine (1) what, if any, objections might be interposed by the Wireless Telecommunications Bureau and (2) to what extent, if any, the processing and grant of the related construction permits might compromise the Commission's flexibility in making the channel 52-59 spectrum available for new wireless services in accordance with the *Notice of Proposed Rulemaking* in General Docket No. 01-74. *Reallocation and Service Rules for the 698-746 MHz Spectrum Band*, FCC 01-91 (March 28, 2001) (the "NPRM").

Careful consideration of the pending proposals in which ACME has an actual or potential interest demonstrates that the processing and grant of the ACME-related proposals will not be inconsistent with the *NPRM* or otherwise compromise any options or decisions the Commission has or might make pursuant to the *NPRM*.

The ACME Proposals

Lexington, Kentucky. ACME has a rulemaking petition pending which seeks the allotment of Channel 59, or, alternatively, Channel 20, to Lexington, Kentucky. ACME is the proposed permittee of the new Lexington television station under the parties' related settlement proposal.

Portland, Oregon. There currently is pending an ACME-related rulemaking petition which seeks the allotment of Channel 59 at Portland, Oregon. The petition can be amended to specify either Channel 52 or Channel 56.

Richmond, Virginia. There is an ACME-related rulemaking petition pending which seeks the allotment of Channel 52 at Richmond, Virginia. The Richmond petition is mutually exclusive with a Petition for Rulemaking filed by Bell Broadcasting, LLC ("Bell"), licensee of Station WUPV(TV), Channel 65, Ashland, Virginia, which seeks to substitute

Channel 52 for the existing Channel 65 allotment at Ashland. In view of the Commission's *Order on Reconsideration of the Third Report and Order* in WT Docket No. 99-168, it may be possible for Bell to move its analog operation to its paired Channel 47 DTV assignment. See *Service Rules for the 746-764 and 776-794 MHz Bands*, FCC 01-258 (September 17, 2001). However, this presentation makes no argument as to the merits of Bell's pending rulemaking petition.

Importance of ACME Proposals

ACME was created in 1996 with the intention of acquiring television stations that could become affiliates of The WB Television Network (the "WB"), one of the newly-emerging television networks. To that end, ACME has acquired ten (10) television stations all of which are WB affiliates. The addition of new television stations in Lexington, Portland, and Richmond is of vital importance to ACME's ability to expand its own operations and to provide outlets for the distribution of WB programming.

No Impact on Commission Options or Decisions

- It is ACME's understanding that the Mass Media Bureau is prepared to process the ACME-related proposals for Lexington and Portland along with approximately ten (10) other similarly-situated proposals. It is presumed that all of these proposals involve settlements among mutually exclusive applications that were filed with the Commission more than five (5) years ago and would not require the filing of additional competing applications or a subsequent auction. In some cases (like the ACME-related proposal in Portland), there may be a need to amend a pending rulemaking petition, but that amendment would involve only a minor expenditure of Commission resources to process the rulemaking petition and grant the related application. The Mass Media Bureau may also be in a position to process the ACME-related proposal for Richmond if there is a mutually satisfactory resolution of the conflict with Bell's rulemaking petition which also seeks the allotment of Channel 52.

- In the *NPRM*, the Commission directed "the Mass Media Bureau to suspend processing of applications and channel allotment petitions for new analog stations on Channel 59, but to allow limited amendments to specify another channel, if available." *NPRM* at ¶24. The Commission further stated that it would "*not* direct the Mass Media Bureau to suspend processing of applications (with the exception of stations on Channel 59) for new analog stations . . ." *Id.* (emphasis added). The Commission added that "[a]ny grant made during the pendency of this proceeding will, however, be conditioned on the outcome of this proceeding." *NPRM* at ¶24 n.64. In short, the Commission expressly contemplated that proposals for Channels 52 to 58 (including those reflecting an amendment to a timely-filed proposal for Channel 59) would be processed and granted but subject to the ultimate outcome of the *NPRM*. The *NPRM* itself thus ensures that no party receiving a construction permit for Channels 52 to 58 would be able to build the station or take any other action that would

compromise the Commission's options or decisions under or in accordance with any orders adopted in the *NPRM* proceeding.

- In accordance with the Commission's explicit directives in the *NPRM*, the Mass Media Bureau has processed and apparently is poised to grant four (4) pending NTSC proposals for channels 52-58, including one in Galesburg, Illinois. There is no practical distinction, however, between the Galesburg proposal and the ACME-related NTSC proposals because they all involve a settlement and have been cut-off from the filing of additional competing applications. Although the ACME-related proposals may require a minor amendment specifying a new channel, they are ready for grant. The issuance of an *NPRM* proposing the allotment of a new channel is inconsequential and does not provide a reasonable basis to treat the ACME-related proposals differently than the Galesburg proposal or the others that the Mass Media Bureau apparently is prepared to grant.
- There are already 89 licensed full service NTSC analog stations and twelve (12) previously-approved analog construction permits in the lower 700 MHz band. *See NPRM* at ¶21. Therefore, the processing and grant of the ACME-related proposals, as well as other similarly-situated proposals, is not likely to have any adverse impact on the Commission's ability to clear the band prior to the end of the DTV transition period or any other time period established by the *NPRM* (especially because (1) as indicated above, all construction permits issued at this date will be subject to the outcome of the *NPRM* and (2) the Commission proposed that new wireless licensees in the lower 700 MHz band provide "substantial service" by January 1, 2015, which is eight (8) years after the scheduled end of the DTV transition period).
- The Commission has not yet scheduled the new auction date for the upper 700 MHz band, and, given practical realities, it is unlikely that the lower 700 MHz band auction will occur prior to 2003 at the earliest. Indeed, the budget compromise reached earlier this year between the White House and Congress would delay the auction for the upper and lower 700 MHz bands until 2004 and 2006, respectively. Therefore, there will be no new wireless licensees in the lower 700 MHz band until near the scheduled end of the DTV transition period, and, hence, there is no need to clear this spectrum band until the end of that transition period. In any event, as mentioned above, the grant of any NTSC proposal will be subject to whatever conditions or rules are established in the Channel 52-59 rulemaking proceeding.