

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

In the Matter of	)	
Reexamination of the Comparative	)	<b>MM Docket No. 95-31</b>
Noncommercial Educational	)	
Applicants	)	
Association of America's Public	)	
Stations' Motion for Stay of Low	)	
Power Television Auction (No. 81)	)	

**COMMENTS OF AMADOR S. BUSTOS**

Amador S. Bustos (Bustos), a licensee of the Commission in the AM Broadcast Service, on his own behalf as an Hispanic broadcaster, and in the interests of minority broadcasters generally, hereby respectfully submits his comments in response to the Second Further Notice of Proposed Rule Making (the Notice), FCC 02-44, released February 25, 2002. The Notice seeks Comment on various options for resolving mutual exclusivity between and among commercial and non-commercial educational (NCE) broadcast applicants. Bustos' interest in this proceeding relates to the disproportionate adverse impact minority broadcasters are experiencing in building AM facilities due to the delays caused by the Appeals Court's decision in NPR v. FCC.

1. Bustos as an individual licensee and as a principal in KZSJ, LLC., is licensee of two major market AM radio stations with exclusively minority formats (Vietnamese). Bustos formerly was the founder, President and CEO of Z-Spanish Media Corporation. Z-Spanish was the largest licensee of Spanish language radio stations in the United States until August of 2000 when it merged with Entravision Communications (NYSE: EVC). Bustos currently serves on the Board of Directors of Entravision.

2. While trying to build additional AM facilities to better serve more minority communities, Bustos has encountered serious misinterpretation of the Appeals Court's decision in *NPR v. FCC* by the Commission's staff as to the applicability of such a ruling to AM facilities. In the AM Broadcast Service, there is no such thing as an NCE license. AM broadcast licenses are in fact issued to schools, colleges, nonprofit organizations and municipalities, but the license is not classified as a commercial or NCE license. Stations licensed in the AM service can operate on a commercial basis or a non-commercial basis, at will. Though footnote 6 of the Notice states that "the Commission licenses AM NCE stations on an application-specific basis, and that such station must demonstrate that they meet NCE eligibility requirements," this statement is in fact misleading. This is because the license that is issued to an AM applicant who states that it intends to operate on a non-commercial basis is not conditioned on or limited to operating as a non-commercial facility for any length of time. Such a licensee may, without prior notice to the Commission, or prior approval, convert to commercial operation at any time; even the very same day the license is issued or acquired.

3. Therefore, an applicant for an AM broadcast license does not fall within the definition of Section 397(6) of the Communications Act, nor is such an applicant subject to an exemption from competitive bidding pursuant to the Court of Appeals' finding in *NPR v. FCC*. As stated by the Court of Appeals, the nature of the station is the determining factor as to whether it is subject to competitive bidding. Therefore, it is the obligation of the Commission to subject to competitive bidding all mutually exclusive AM applicants that cannot resolve their mutual exclusivity by technical amendments or

Section 307(b) analyses. As a corollary to this argument, the FCC should not hold-up, or cause any unnecessary delay to current licensees, permittees or applicants in any uncontested proceeding who wish to make necessary major modifications to improve the facility or carry out the optimum construction of a radio station under a validly issued Construction Permit (CP). This is particularly crucial in cases where the CP has a mandated expiration date, and the station can no longer be built at the original designated site. The case of KSDG-AM, Julian, CA in which Bustos has an interest and which is under Application for Review to the Commission (File # BP-19961117AA, Facility ID # 84907) is a perfect case in point. This is a type of Catch-22 created by the Commissions misinterpretation of the Court's ruling as it applies to AM facilities.

4. Even if the Commission disagrees with the above comments, and believes that there in fact is a specific identifiable class of NCE AM licenses, the fact remains that AM broadcasting is a mature service and that there are few opportunities to build new AM facilities. This scarcity of available spectrum, then, strongly supports Option 2 of the Notice. Option 2, discussed at paragraph 12, would permit NCE entities to apply for AM construction permits, but would subject those applications to dismissal if there is a mutually exclusive application filed by a commercial applicant. Option 2 is consistent with current practice, in that it would allow NCE entities to apply for new AM facilities and to make major changes in existing facilities. At the same time, Option 2 also recognizes that there are no reserved frequencies in the AM band for NCE applicants.

5. With radio industry consolidation, AM stations have become important entry-level facilities for minority broadcasters. In addition, suburban AM stations are relatively affordable vehicles for minority formats, and the 2000 Census shows rapid minority movement from the inner cities to the suburbs. Therefore, any delay in clarifying the status of AM stations in relation to NCEs is disproportionately impacting minority broadcasters.

Therefore, the foregoing considered, Amador S. Bustos respectfully requests that the Commission determine that all AM applicants are subject to the competitive bidding process, unless mutual exclusivity can be resolved through technical amendments or through Section 307(b) analyses by the Commission. In the alternative, the Commission should, with respect to AM applications, utilize Option 2 as proposed in the Notice.

Respectfully submitted,

By: \_\_\_\_\_  
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