

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

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Federal Communications Commission
Office of Secretary

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

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To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

Bible Broadcasting Network, Inc.¹, ("BBN") by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby files its Petition for Partial Reconsideration of the Commission's action in its Second Report and Order, *Reexamination of Comparative Standard for Noncommercial Educational Applicants*, FCC 03-44, released April 10, 2003 ("Second R&O"). A summary of the Second R&O was published in the Federal Register at 68 Fed. Reg. 26220 on May 15, 2003. Pursuant to Section 1.4 and 1.429 of the Rules, this petition is timely filed.

BBN hereby requests the Commission reconsider a part of its decision in the Second R&O at Paragraphs 39-40 that addresses the issue of how the Commission will treat certain vacant FM Channel allotments. At Paragraph 21 of the Second R&O, the Commission stated that it would allow applicants for noncommercial educational ("NCE") stations to submit applications for non-reserved spectrum in a filing window,

¹ BBN is a non-stock non-profit entity that is the licensee of full power AM and FM stations and FM translators that operate with a non-commercial educational format.

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subject to being returned as unacceptable for filing if there is any mutually exclusive application for a commercial station. In the First Report and Order in this proceeding, *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 15 FCC Rcd 7386, (2000), clarified, 17 FCC Rcd 13132 (2002) (“First R&O”), the Commission decided to allocate a channel as reserved for NCE use if a proponent demonstrated: for radio, that it is technically precluded from using a reserved channel and would provide a first or second NCE radio service to 10% of the population within its 1 mV/m contour, and for television, that there is no reserved channel available in the proponent’s community and it would provide a first or second CE television service to 2000 or more people who constitute 10% of the population within its noise limited contour. These standards apply at the allocation stage of the licensing process. Apparently to balance its approach in returning NCE applications in conflict with commercial applications, in the Second R&O, the Commission ruled that it would afford entities an opportunity to reserve allotments for NCE use based on relaxed reservation standards for a certain allocations.² The Commission stated it would direct the staff to open a short window in the “near future” during which interested parties may attempt to reserve FM channels using the standards that were not previously available to them.

BBN believes that the reservation of commercial channels for NCE use is, in itself, in the public interest since the reserved channel may only be used for NCE purposes. However, BBN, like many other non-profit NCE educational broadcasters, has *limited resources*. It is not a good use of resources to expend money and time on

² FM channels for which the FCC initiated an allocation rule making proceeding (as determined by the release date of a related Notice of Proposed Rulemaking) before August 7, 2000, and for which the FCC has never opened a filing window to accept applications. The FCC noted that there are approximately 450 such FM channels, including approximately 350 that were previously scheduled for auction.

providing the technical studies required by the Commission for the reservation of a commercial channel for NCE use unless there is some incentive for taking that initiative.

In the First R&O, the Commission established a Point System which is to be applied in the event of conflicting mutually exclusive applications for construction permits for NCE facilities. In connection with the channels for which the “short window” will be opened, BBN requests that a party to a rulemaking proceeding who successfully persuades the Commission to reserve the channel for NCE use receive three (3) points in any future contested proceeding for the construction permit to use the allotment. Under the Point System, three points are awarded to an established local applicant; two points are awarded for diversity of ownership or for operation of a state-wide network; and one or two points are awarded depending on the degree of superior signal coverage. BBN believes that the expenditure in time and funds necessary to persuade the Commission to reserve a proposed allotment for NCE use should merit an award of the same number of points awarded to an established local applicant, i.e., 3.

Taking this action would encourage NCE broadcasters to participate in rule making proceedings to bring to the Commission’s attention information necessary for the Commission to make a public interest determination that the channel should be reserved for NCE use. Failure by the Commission to do so will most likely result in many commercial channels not being reserved for NCE use because there would be no party with an incentive to expend the resources to do so. If an NCE entity participated in the *rule making proceeding*, the outcome might be the reservation of the channel for NCE use. The public benefits when many parties express interest in rule making proceedings because diverse opinions are ventilated which otherwise might not be heard.

Wherefore, BBN respectfully request the Commission to reconsider its Second R&O to the extent set out herein.

Respectfully submitted,

BIBLE BROADCASTING NETWORK, INC.

A handwritten signature in black ink, appearing to read 'Gary S. Smithwick', written over a horizontal line.

By:

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