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

In the Matter of	)	
	)	
Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures	)	MB Docket No. 09-52 RM-11528

FORMAL COMMENT

by
Robert A. Lynch
&
Romar Communications Inc.

To: The Commission

Robert A. Lynch ("Lynch") and Romar Communications Inc. ("Romar'), a radio broadcasting company to which Mr. Lynch serves as president, respectfully submits its Formal Comment in the above-referenced Commission Notice of Proposed Rule Marking ("NPRM") which seeks to revise certain Commission rules and policies governing the processing of AM and FM broadcast applications for new or major change facilities. Given the nature of the commenters' interests and expertise, as well as the broad scope of the Commission's initiative, this Comment will focus its attention on those areas of the NPRM which Mr. Lynch and his company believe are most important toward fostering diversity, fairness and opportunity for those who wish to construct and operate local broadcast stations in the Public Interest. Accordingly, much of this Comment will focus on proposed rule changes which would impact those seeking new or modified facilities in the AM spectrum.

BACKGROUND:

Robert A. Lynch has for the past 22 years served as a staff engineer with the firm Independent Broadcast Consultants, Inc., Trumansburg, NY. As such, he has authored, or participated in the preparation of, numerous AM and FM broadcast applications. He is familiar with the rules and procedures impacting broadcast technical compliance and the granting of broadcast construction permits. He is also all-too-familiar with the manipulation of those rules by certain applicants and their representatives, manipulations which may deny construction permits to more

worthwhile proposals. Mr Lynch has engineered (and often re-engineered) new or major change proposals for both AM Auction #32 and #84 applicants. He's seen how procedural twists and turns can allow some marginal technical proposals to succeed, while other more thoroughly researched endeavors fail.

Romar Communications Inc., to which Mr. Lynch and his sister Marcia serve as shareholders, has sought since 1987 to secure its first AM broadcast construction permit. It currently has pending an application within AM Auction #32 for a new station at Lansing, New York. 1/ It also sought a new commercial AM facility in AM Auction #84 for Archbald, PA. 2/ Romar's partners are well aware of the challenges impacting small broadcast companies and their principals when their sincere proposals to serve deserving communities confront the realities of Commission auctions and well-financed competition.

OVERVIEW:

Lynch and Romar applaud the Commission's goal (as expressed in Paragraph II-A-14 of the NPRM) to provide the widest broadcast ownership diversity within the Commission's statutory limitations. Both this proceeding and other Commission inquiries have pointed to the increasing concentration of broadcast ownership, both within individual markets and nationally. Most commenters have concluded this concentration has compromised the public interest. Lynch and Romar share this view. Every effort should be made to foster the return of hometowm "Mom and Pop" radio. Without a doubt, the most effective means to encourage hometown radio is through the award of new station construction permits. With many existing stations overpriced, and consolidated ownership unwilling to sell lest they compromise their effective market monopoly, the individual entrepreneur or small corporation is usually given no alternative except to build a station from the ground up.

Unfortunately, the NPRM also seeks to revise Commission rules to "...*afford greater opportunities to participate in competitive bidding.*" (See Paragraph I-1) In this commenters' opinion, the objectives of diversity and auction participation work at cross purposes. Given financial reality, the smaller, lesser-capitalized applicant is more likely to lose at auction. While competitive bidding is mandated by Congress, the Commission should utilize every administrative tool at its disposal to encourage preferences for proposals which satisfy public interest priorities.

1/ See (BNP)-19971126AH; also BNP-20020522AAM; currently designated to proceed to auction.

2/ See BNP-20040130BAS; MX Group 84-92; subsequently dismissed at applicant's request.

Toward the dual objectives of encouraging broadcast ownership diversity and ensuring that only technically-sound broadcast applications compete in an auction-based environment, Lynch and Romar now proceed to address specific reforms advanced in the NPRM.

I. (Section II-A; Paragraphs 2-14)
Modify Priority (3) and (4) Section 307(b) Radio Licensing Standards:

The NPRM seeks comment on the Commission's tentative conclusion that its traditional award of so-called "Section 307(b)" preferences under Priority 3 (First local service) and Priority 4 (Other public interest matters) be greatly restricted, especially when an applicant's proposal encompasses a community or service area within an Urbanized Area, as defined by the U.S. Census. The Commission cites AM Auction #32 in which only three mutually-exclusive groups proceeded to auction. It laments this low number. The NPRM continues:

> *"Thus, new entrants, many of whom propose stations in small communities and rural areas, may be excluded from the* (bidding) *process without being able to employ the bidding credits established by the Commission to assist such applicants to gain a toehold in the industry. Accordingly, we are concerned that the Commission's Section 307(b) standards, as applied in the AM licensing process, may be inconsistent with our longstanding, fundamental policy goal of broadening participation in the broadcast industry."*

In effect, the Commission argues that broadcast applicants are unfairly rewarded for proposing communities of license in or near large population centers. These applicants receive "Section 307(b)" preferences under Priority (4) for serving these large populations, while other, more deserving applicants, whose communities possess fewer people, but also fewer existing radio choices, are placed at an unfair disadvantage. The Commission contends (without significant quantitative evidence) that newer, more diverse applicants disproportionately apply for stations in smaller communities. Therefore, the NPRM seeks to retrict awarding Priority (4) preferences based on population differences. It proposes dispositive Priority (4) preferences should be awarded only in, *"rare and exceptional circumstances."*

Furthermore, the Commission tentatively concludes that any new station to be located in an Urbanized Area or whose daytime principal community signal would cover (or could be modified to cover) at least 50 percent or more of that Urbanized Area should be considered a proposal to serve the entire Urbanized Area and thus not be accorded a"Section 307(b)" Priority (3) preference for first local service, *"absent effective rebuttal of the presumption."* The change would accord a major advantage to proposals located far from an Urbanized Area. It could also place many more mutually-exclusive applications into auction.

Lynch and Romar disagree with the Commission's tentative conclusions. First, we view the fact that as many as 81 out of 116 mutually-exclusive AM Auction #32 applications were resolved through Section 307(b) analyses (see Footnote 18) as a healthy step toward diversity and public interest broadcasting. Under Priority (3), new communities were accorded first local service. And under Priority (4), new stations were assigned to areas where the most people could benefit from their signals. There's little evidence that new entrants are more likely to serve smaller communities. To the point, any lack of participation by new entrants is more likely the product of financial disincentives produced by the auction process or the continued regulatory loopholes of which broadcast speculators take advantage.

In many cases, an Urbanized Area can harbor a "community within a community." This commenter draws upon its own experience with regard to its (former) application for a new AM station at Archbald, PA, located within the Scranton, PA Urbanized Area. In October 2005, the undersigned, Romar's president, performed an exhaustive examination of Archbald, PA, walked the borough's streets to inventory businesses, conferred with community leaders and gain insights into the community's attributes and degree of independence from the remainder of the Scranton UA. He summarized his findings in an amendment to the pending application later that month and followed with a requested "Tuck" analysis the following July. Whereas many broadcast applicants employ a "*Google* Search" or its equivalent to document community attributes, the undersigned actually traveled to Archbald and gained a flavor of the community and its people. What he found was a small city (or large village) that maintained its independence from Scranton, cherished that independence, and even felt a little angry that it would be seen as only a Scranton appendage. Essentially, Archbald was a part of the Scranton UA by coincidence, not intent. 3/

Whatever the outcome of the proceeding resulting from the Commission's NPRM, some allowance should be made within the rules for "communities within communities" to hold standing in the evaluation process. What's more, the rules should not be rewritten to disadvantage communities like Archbald when compared with smaller towns remote from Urbanized Areas, but with less individual character. A proposal's proximity to an Urbanized Area should not automatically deny it a "Section 307(b)"

3/ Romar's proposal under BNP-20040130BAS was accorded dispositive preference under Priority (4) population factors. Romar regrets it was compelled to request dismissal of the application due to its inability on short notice, during winter, to locate an affordable, technically-viable antenna site.

Priority (3) preference as first local service. Nor should that proximity lead to an instant assumption that the station would serve (or its owners intend to serve) the entire Urbanized Area. Current rules permit the licensing only of new full-time (as opposed to daytime-only) stations. Therefore, a more realistic criterion of local service might involve evaluation of both daytime *and nighttime* principal community contours. What's more, any applicant given the rebuttable presumption of serving the entire Urbanized Area should be accorded considerable opportunities to present the Commission evidence in support of community independence. This evidence could take the form of letters from community officials, a survey of local businesses and community services and other quantitative and qualitative data.

Lynch and Romar agree with the Commission that the eight-factor "Tuck" analysis of community independence is imperfect. In this commenters' opinion, the "Tuck" standard seeks to quantify qualitative factors. For example, a strong retail community counts the same as a marginal one. A local zip code and weekly newspaper/advertiser count more than does a strong local government. Meet five-out-of-eight, you win; just four strong factors out-of-eight, you lose. The "Tuck" standard may need reform. But it need not be abandoned.

One more issue deserves attention in the assignment of preferences among groups of mutually-exclusive broadcast applicants. Within the limits of its statutory authority, the Commission should examine the potential of granting dispositive preferences to applicants proposing their first broadcast station. A partial preference could be accorded a party proposing its second station. Under such a standard, a very strict attribution rule would need to apply, as would the need for a three-to-five year holding period to ensure against construction permit trafficing. We also encourage the Commission to examine opportunities for the awarding of preferences for such attributes as an applicant's promise to provide hands-on day-to-day management; his or her prior broadcast experience, especially within the subject market; intent to provide a minimum level of live, local programming; and other diversity factors. Additional attention should be accorded the proposed station's potential competitive environment. A highly consolidated market may warrant a new voice more than does a more diverse one. Admittedly, these suggestions fall somewhat outside the scope of the instant NPRM. Nonetheless, Lynch and Romar invite the Commission to examine them either now or at a future time.

II. (Section II-E; Paragraphs 26-28)
Establish "Technically Eligible for Auction Processing at Time of Filing" Criteria for New and Major Change Applications in the AM Broadcast Service:

As a broadcast allocations engineer by profession, Mr. Lynch, the undersigned, agrees wholeheartedly with the Commission that the current practice of deferring a "hard look" at pre-auction technical proposals has always been, and continues to be, a mistake. We concur with the Commission's finding that engineering deferral,

> *"...has contributed to the filing of patently defective applications, undermined the accuracy and reliability of...mutual exclusivity and Section 307(b) determinations, and frustrated the staff's ability to manage the window filing process efficiently."*

Put simply, the current system clogs the Commission's database with garbage. Engineering deferral places sincere, well-researched technical proposals on a par with hasty, slipshod initiatives, sometimes advanced on a whim. For many an applicant, the overarching attitude remains, "Put it on file now; we'll clean it up later." Such a flippant approach to the broadcast allocation process began with the switch to filing window procedures in 2000. Now, nearly a decade later, it should be put to an end.

While numerous details await resolution, Lynch and Romar endorse the Commission's tentative conclusion that would require applicants in future AM broadcast auctions to meet at the time of filing, *"basic technical eligibility criteria."* These criteria should include compliance with community coverage standards, and daytime and nighttime interference protection of existing stations and prior-filed proposals. Applications not meeting these standards should be dismissed prior to auction. Any pending application from AM Auctions #32 and #84 that has either not been auctioned or designated for auction should be made subject to this pre-auction criterion. In the case of AM Auction #32 and #84 participants, applicants should be given a reasonable opportunity to correct their proposals in ways that would not eliminate mutual exclusivities or constitute major modifications. As a result, only buildable stations would be subject to bid. 4/

Given the complexity of AM allocation analysis, the devil's in the details. Many AM proposals are predicated on the use of measured soil conductivities, as opposed to FCC Figure M-3. Yet, the "tech box" which must be completed on the

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4/ Lynch and Romar would oppose any attempt by applicants to "correct" their filings through redesignating community of license, even though such redesignations are now viewed as "minor" changes.

electronic Form 301 submitted with "short form" filings during the AM Auction window, makes no provision for inserting measured conductivities. Nor could other supportive engineering exhibits be readily supplied. Even were provisions made for insertion of this supplemental data, the crush of electronic files could overwhelm the Commission's system during the final days of a filing window, given past experience and the limits of current technology.

Additionally, the engineering analysis required to advance a letter-perfect AM application is time-consuming and costly. Conductivity radials must often be run. Daytime groundwave and nighttime skywave studies need to be completed. On occasion, special field test authorizations must be secured for locations at or near the intended antenna site. Perhaps even more important, a firm, engineeringly-acceptable antenna site must be located and perhaps purchased. Given those requirements, some potential applicants might be reluctant to invest in those pre-filing expenses, fearing they'd only find themselves mired in a 12-applicant daisy chain, impossible to untangle short of auction.

The complexity of AM broadcast technical filings entails another risk. Sometimes, despite an engineer's best efforts, a defect is spotted by the processing line. Policies can change without notice. Another station's minor change application can be placed on file just days before a filing window opens. A domestic station can go dark (thus changing everyone else's nighttime interference limits.) Or a revision of international agreements can alter the standing of a Canadian or Mexican authorization. Absolute perfection is often impossible without a minor curative amendment.

As a potential compromise, this commenter suggests a two-stage procedure for pre-auction proposals. The current "short form" window filing process would continue much as exists currently. The Commission would subsequently issue a Public Notice identifying potentially mutually exclusive proposals. Within a reasonable period, those applicants wishing to proceed would submit any and all supplemental engineering to buttress their short-form proposals. Perhaps an interim filing fee could be required to defray processing costs. Only after this supplemental data was submitted would the processing staff accord the engineering a "hard look." Any engineering modifications from the original "short-form" submission would have to minor and not eliminate mutual exclusivity. At this point, the pertinent application would be required to stand *substantially* in compliance with the rules. All substantially compliant applications would then

proceed to Section 307(b) analysis, and potentially auction. As an alternative, a standard "long form" 301 application would be submitted following issue of the above-referenced Public Notice. Once such an application receives a dispositive Section 307(b) preference or secures the winning bid at auction, the application would be subject to grant.

A final factor to consider is at what stage of the process a firm, viable antenna site would be required. At present, most "short-form" AM applications utilize arbitrary, unavailable, or patently unbuildable site coordinates as a matter of convenience. In one instance well known to this commenter, the applicant specified coordinates in the center of a public roadway. Commission staff review of an application for engineering compliance is a waste of resources if the proposed site is a myth. An antenna atop the post office might provide the community interference-free nighttime coverage; but one could never be built there.

As a result, this commenter recommends the Commission adopt a tough standard either to require a firm proposed site at the time a "short form" application is filed, or when supplemental engineering, referenced above, is tendered.

III. (Section II-G; Paragraphs 31-33)
Cap on Number of AM Applications That May Be Filed in an Auction Window:

In an effort to diversify broadcast ownership and provide maximum opportunity for new entrants to enter the field of broadcast ownership, Lynch and Romar encourage the Commission to adopt a cap on the number of applications a party or its affiliates may file in any broadcast auction. At present, when one views the list of mutually-exclusive applications, one often finds the same names over and over. All else equal, the public interest is best served when as many different applicants as possible succeed in securing at least one broadcast property, whether at auction or through pre-auction analysis.

The Commission notes (Paragraph 33) its 1991 Media Bureau standard in a low power television and TV translator auction of a five-station application limit and a strict one percent attribution rule for participating parties. In AM and FM broadcast auctions, the five-application /one percent attribution limit seems fair. However, this commenter welcomes alternative suggestions.

CONCLUSION:

As stated at the outset of this Comment, Robert A. Lynch and Romar Communications Inc. offer their opinions for the primary purpose of advancing the diversity of ownership among broadcast stations, and instilling fairness and opportunity within the process of application review. In this commenters' opinion, some of the reforms proposed in this NPRM are long overdue. Other changes could actually compromise diversity, fairness and opportunity, not advance it. Mr. Lynch and his company hope Commission staff will thoughtfully review these opinions in a way that will serve and advance the Public Interest.

Respectfully submitted,

July 10, 2009

Robert A. Lynch
President
Romar Communications Inc.